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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PORTO RICO, PETITIONER,

vs.

RUSSELL & CO., SUCRS., S. EN C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 4, 1932

CERTIORARI GRANTED DECEMBER 5, 1932

(37,189)

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IN UNITED STATES DISTRICT COURT, DISTRICT OF PORTO RICO

Law. No. 2049

THE PEOPLE OF PORTO RICO, Represented by MANUEL V. DOMENECH in His Character as Treasurer of Porto Rico, Plaintiff,

v.

RUSSELL & Co., Sucrs., S. en C., Defendant

AMENDED COMPLAINT—Filed November 13, 1930

Comes now the plaintiff, The People of Porto Rico and in its representation Manuel V. Domenech, Treasurer of Porto Rico, through the undersigned attorneys and by permission of the court first had and obtained files this amended complaint, complaining of Russell & Company, Sucesores, S. en C., and for cause of action against said Russell & Company alleges:

1. That the plaintiff, The People of Porto Rico, is a sov-
[fol. 2] ereign entity created by Act of the Congress of the United States of America, approved March 2, 1917, generally referred to as the Organic Act of Porto Rico; and Manuel V. Domenech is the duly appointed and qualified Treasurer of Porto Rico in accordance with law.

2. That the defendant is a civil agricultural partnership organized as a juridical entity under the civil laws of Porto Rico with capacity to sue and be sued. On information and belief that the civil agricultural partnership Russell & Company, Sucesores, S. en C., is now composed of the following persons who have associated themselves in said partnership for the purpose of growing sugar cane, to wit: Frank A. Dillingham, a citizen of and a resident in the State of New Jersey; Horace Havemeyer, a citizen of and resident in the State of New York; Edward S. Paine, a citizen of and living in the State of New York; Edwin L. Arnold, a citizen of and a resident of the State of Florida; Frank M. Welty, a citizen of and a resident

in the State of Ohio, and H. B. Orde, a citizen of Great Britain and a resident in the Dominion of Canada.

3. That the defendant company and its predecessor Russell & Company, S. en C., has been owner since before the year 1921 of the following pieces of land in the Island of Porto Rico, all subject to irrigation from the waters of the Southern Coast Irrigation System, as hereinafter set out:

(1) Farm marked as number 295 on the plan of the Porto Rican Southern Coast Irrigation System, called "Cristina", with a total area of 914.90 acres, situated in the Amuelas ward of the municipality of Juana Diaz, whose boundaries are the following: On the North the Jacaguas river and lots number 371, A-374-375-377 and the main road from Ponce to San Juan; on the South, lot No. 366A, and Jacaguas river lots number 291-925, C-296-359-364-366; on the East, lots number 294-296, A-317 A-319A-323A; on the West, the Jacaguas river and lots number 371 and 383.

(2) Farm called "Hacienda Luciana", marked as num-[fol. 3] ber 379, situated in the wards of Colores Collado and Jacaguas of the municipality of Juana Diaz, with a total area of 736.71 cuerdas, the boundaries of which are the following: On the North, the Jacaguas river; on the South the Jacaguas river and the main road; on the East, the road between Villalba and Juana Diaz; on the West, lot number 380 and the Jacaguas river.

(3) Farm No. 403 of the said plan, named "Hacienda Fortuna", situated in the Sabana Llana ward of the municipality of Juana Diaz, with a total area of 913.44 cuerdas, with the following boundaries: On the North lots numbers 307A, 335, 336, 334, 338, 339, 340, 391, 399, 402, 423 and the Jacaguas river; on the South lots number 404 and 413 and the Jacaguas river; on the East the Jacaguas river; and on the West the lots number 413, 414, 421 and 423.

(4) Farm No. 309, called "Hacienda Serano", situated in the municipality of Juana Diaz, with an area of 558.69 cuerdas and with the following boundaries: On the North by lots number 308 and 312; on the South by the Carib-

bean Sea; on the East lot No. 308; on the West lots number 308, 310, 311 and 316.

(5) Farm No. 413, called "Hacienda Union", situated in the municipality of Juana Diaz, with an area of 1044.55 acres and with the following boundaries: On the North by lot No. 403 and by the Ponce-Guayama insular road; on the South by the Caribbean Sea; on the East by the lots number 403, 404, the Jacaguas river, lots number 407, 408, 409, 410 and 411; on the West by the Inabon river and lot No. 414.

A certified copy of the plan of the irrigated district of the southern portion of the island, insomuch as to that part which is pertinent, accompanies this complaint and is made to form a part thereof.

4. The farms described in paragraph 3 of this amended complaint have been supplied since the year 1915 and are now being supplied with water for the purpose of irrigation from the public irrigation system on the southern side of Porto Rico, by virtue of a contract entered into between their owners, predecessors of the defendant company in [fol. 4] ownership, and the Commissioner of the Interior of Porto Rico, which contract entered into the 26th of August, 1914, was set forth in deed No. 20, executed in San Juan, Porto Rico, the 8th of July, 1916, before the notary Mr. Frank Antonsanti.

The plaintiff alleges that all the officials of the Government of Porto Rico charged with the compliance of the said contract have complied with same in its entirety, and in consequence the farms described in paragraph 3 of this amended complaint have received and are receiving all the volume of water agreed for the purposes of irrigation and from which their owners, i. e., the entity Russell & Company, Sucesores, S. en C., defendant, and its predecessors who executed the said contract have benefited.

5. Plaintiff alleges that the above described pieces of land, have not been and are not subject to payment of the irrigation tax imposed under the provisions of an Act of the Legislature of Porto Rico, approved September 18, 1908, entitled "An Act to provide for the construction of an irrigation system and to provide revenues therefor; for the temporary appropriation of $200,000 to begin such work and for other purposes", as amended.

6. That the First Session of the Tenth Legislature of Porto Rico passed an Act entitled "An Act fixing a tax on certain lands using waters from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", which law was approved by the Governor of Porto Rico July 8, 1921, and which took effect 90 days after its approval. Said Act is known as Act No. 49 of 1921. That in accordance with the provisions of said Act No. 49 of 1921 the lands of defendant company, described above in paragraph 3 of this complaint, became subject to the payment of a special tax imposed by said Act No. 49.

7. The plaintiff alleges that strictly in accordance with the provisions of said Act No. 49 of 1921 the following amounts have been levied and assessed as taxes against the lands of defendant described in paragraph 3 of the complaint, as follows:

[fol. 5] On the farm No. 295 for the fiscal years from 1922-23 up to the 31st of March, as taxes, class 3, the sum of	$4,391 14
And as surcharges	1,029 07
On the farm No. 379, as class 3, as taxes from 1922-23 up to March 31, 1930	7,466 10
And as surcharges	1,749 68
On the farm No. 403, for the same fiscal years up to March 31, 1930, as class 3 and class 4, described in Section 2 of the stated law, as taxes	22,296 08
And as surcharges	5,225 11
On the farm No. 309 for the same fiscal years and up to stated date, as class 4, as taxes	11,279 30
And as surcharges	2,643 33
On the farm No. 413 for the same fiscal years and up to stated date, as class 4, as taxes	4,485 94
And as surcharges	1,051 29
Resumé:	
Total of taxes owed by the mentioned farms	$49,918 56
Total surcharges owing according to law	11,698 48
Total	$61,617 04

9. The plaintiff alleges that subsequent to the year 1922 the Treasurer of Porto Rico endeavored from time to time to collect from the defendant the corresponding taxes levied and assessed against lands of the defendant according to the provisions of said Act No. 49 of 1921 and that the defendant, though often requested, has failed and refused to pay said taxes or any part thereof, and has constantly obstructed the Treasurer of Porto Rico in the collection of said taxes by injunction suits in the District Court of the United States for Porto Rico and by other means.

10. The plaintiff alleges that the total taxes owed by the defendant on the above mentioned farms for the years [fol. 6] 1922-23 to 1929-30, in the sum of $49,918.56 plus the total surcharges owing according to law in the sum of $11,698.48, making a total amount of $61,617.04, are due and unpaid and constitute a just debt in favor of the plaintiff against defendant and that plaintiff has not received said taxes and surcharges or any part thereof.

Wherefore, plaintiff prays the court to sustain this complaint and after due hearing to render a judgment in favor of the plaintiff, condemning the defendant to pay into the treasury of Porto Rico the full sum of $61,617.04 together with legal interest from the time of the filing of the complaint in this case, and in addition to pay all costs, expenses and attorneys' fees occasioned by this litigation and for such other remedy as to the court may seem proper.

San Juan, Porto Rico, November 13, 1930.

James R. Beverley, Attorney General. M. Rodriguez Serra, of Counsel.

Notified with copy this thirteenth day of November, 1930.

William J. Gilleran, by R. Castro Fdez, Attorney for Defendant, Russell & Company, Sucesores, S. en C.

In District Court of San Juan

Petition for Removal—Filed August 4, 1930

The petitioners, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and

Frank M. Welty, entering a special appearance in this case to the ends of this petition, through their undersigned attorneys, set forth to the court and allege as follows:

1. That they were at the time of beginning this suit, and at all times since that date have been and now are, the only partners constituting the civil agricultural partnership Russell & Co., Sucesores, S. en C., heretofore Russell [fol. 7] & Co., S. en C. That the petitioners Horace Havemeyer, Frank A. Dillingham and Edward S. Paine were then, and now are, the only managing partners, and that the petitioners Edwin L. Arnold, H. B. Orde and Frank M. Welty were then, and still are, the only silent partners constituting the said partnership Russell & Co., Sucesores, S. en C. That the petitioners were at the time of commencing this suit, and at all times since that date have been and now are, the defendants and the only defendants in this suit. That the partnership Russell & Co., Sucesores, S. en C., is the same and identical partnership as Russell & Co., S. en C., having changed the old name of Russell & Co., S. en C., to the present name of Russell & Co., Sucesores, S. en C.

2. That this suit is of a civil character and that the matter and the amount in controversy in this suit exceeds the sum or value of $3,000 exclusive of interest and costs.

3. That this suit was at the time of its commencement, and at all times subsequent to the filing of same was, and now is, a suit between The People of Porto Rico, a political entity created by and in accordance with the laws of the Congress of the United States, represented by Manuel V. Domenech, a citizen and resident of the Island of Porto Rico, domiciled in this island, as plaintiff; and five citizens of the United States of America, neither residents of nor domiciled in the Island of Porto Rico, and a subject of the King of Great Britain, citizen of the Dominion of Canada, neither a resident of nor domiciled in the Island of Porto Rico, as defendants.

4. That at the time of the bringing of this suit your petitioner Horace Havemeyer was, and at all times subsequent to that date has been and now is, a citizen of the United States of America and of the State of New York, and a resi-

dent of and domiciled in the municipality of Islip and the State of New York; that at the time of inaugurating this suit your petitioner Frank A. Dillingham was, and at all times thereafter has been and now is, a citizen of the United States of America and of the State of New Jersey, and a resident of and domiciled in the town of Millburn and the [fol. 8] State of New Jersey; that at the time of initiating this suit your petitioner Edward S. Paine was, and at all times since has been and now is, a citizen of the United States of America and of the State of New York, and a resident of and domiciled in the City of New York, State of New York; that at the time of originating this suit your petitioner Edwin S. Arnold was, and thereafter at all times has been and now is, a citizen of the United States of America and of the State of Florida, and a resident of and domiciled in the city of Palm Beach and the State of Florida; that at the time of starting this suit your petitioner Frank M. Welty was, and at all times since has been and now is, a citizen of the United States of America and of the State of Ohio, and a resident of and domiciled in the town of New Philadelphia and the State of Ohio; that at the time of the inception of this suit your petitioner H. B. Orde was, and at all times thereafter has been and now is, a citizen and subject of the kingdom of Great Britain and of the Dominion of Canada, and a resident of and domiciled in the city of Ottawa and the Dominion of Canada; that neither of the petitioners were at the time of filing this suit, nor have they been at any time since nor are they now, either citizens of the Island of Porto Rico nor residents of or domiciled in the Island of Porto Rico.

5. That The People of Porto Rico is the plaintiff in this suit and at the time of commencing this suit was, and at all times since has been and now is, an organism or political body created by and in accordance with the laws of the Congress of the United States duly approved by the President of the United States; that the said plaintiff is represented in this suit by Manuel V. Domenech and that he was at the time of beginning this suit, and at all times subsequent thereto has been and now is, a citizen of the United States and of the Island of Porto Rico and a resident of and domiciled in the Island of Porto Rico.

6. That this suit is a suit in which the District Court of the United States for Porto Rico has original concurrent jurisdiction in accordance with the United States statutes.

[fol. 9] 7. Your petitioners offer herewith a good and sufficient bond to guarantee the filing in the District Court of the United States for Porto Rico, within thirty days from the filing of this petition, of a certified copy of the record in this suit, and further in guarantee of the payment of all the costs that may be adjudicated by the said District Court of the United States for Porto Rico should the said court find that this suit has been illegally or unduly removed to the said court.

8. That your petitioners desire to remove this suit from this District Court to the District Court of the United States for Porto Rico prior to the trial of the same in accordance with the United States statutes in such cases made and provided.

Wherefore, your petitioners pray this Honorable Court to proceed no further in this case except to decree the removal of this suit to the District Court of the United States for Porto Rico as provided by law, and except for the acceptance and approval of the bond and sureties of the bond presented with this petition and praying that the said removal be ordered, and that the record in this case be sent to the District Court of the United States for Porto Rico, and approving the said bond.

San Juan, Porto Rico, July 19, 1930.

Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde, Frank M. Welty, Petitioners, by O. B. Frazer, Attorney.

Duly sworn to by O. B. Frazer. Jurat omitted in printing.

Filed July 23, 1930. J. N.

[fol. 10] In District Court of San Juan

Order for Removal—Filed August 4, 1930

Heard on the 29th of July, 1930, the motion of the petitioners, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty,

praying for the removal of this case to the District Court of the United States for Porto Rico, and considering the bond for five hundred dollars accompanying same;

The court, in accordance with Section 28 of the Federal Judicial code and the doctrine established in the cases People of Porto Rico v. Fortuna Estates, 279 Fed. Rep. 500; Goyco v. Russell & Co., 4 Fed. (2d), and South Porto Rico Sugar Co. v. Sepulveda, 27 P. R. R. 310;

Hereby orders and decrees that this case be removed in the manner provided by law to the District Court of the United States for Porto Rico, at the same time approving the bond presented by the petitioner.

[fol. 11] Given in San Juan, P. R., this twenty-ninth day of July, 1930.

C. Llauger Diaz, District Judge.

Notified the parties this 30th of July, 1930.

P. N. Colberg, Secretary.

In United States District Court

Amended Motion to Remand—Filed August 15, 1930

Now comes the plaintiff and moves the court to remand the above-entitled cause to the District Court of San Juan, Porto Rico, from whence it was removed for trial, for the following reasons:

1. Because defendant in this case, as it appears from the complaint, is a civil partnership constituted under the provisions of the Civil Code of Porto Rico. The same as corporations, associations and institutions of public interest, the private civil partnership has a juridical personality which is independent of the personality of its individual members. Civil juridical persons are legally empowered to acquire and possess property of all kinds, to contract obligations and institute civil actions in accordance with the law. (Sections 27 to 30 of the Civil Code.) Under the civil law, a partnership stands on the same footing as a corporation in so far as its capability of suing and being sued is concerned. Therefore Russell & Company being a domestic partnership there is no diversity of citizenship in this case.

2. Because the plaintiff in this case is The People of Porto Rico, this court has no jurisdiction to try the several questions in controversy herein. Under section 41 of the Organic Act of Porto Rico (Law of Congress approved March 2, 1917), this court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign state or states, or citizens of a state, territory or district of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of $3,000, and of all controversies in which there is [fol. 12] a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid. The People of Porto Rico is neither a citizen nor a subject. It is a body politic with governmental powers, a sovereign. It should be considered, for the purpose of the jurisdiction of the court in cases of removal from the insular district courts, the same as a State and an action in a State court, as the present action was brought, by the State against citizens of other States, is not removable to the Federal court for diversity of citizenship; and a suit is not removable for diversity of citizenship where a State is a party.

Parks v. Carriere Consol. School District, 12 Fed. (2d) 37.

Arkansas v. Kansas & T. Coal Co., 22 S. Ct. 47; 183 U. S. 185; 46 L. Ed. 144.

In re Johnson Oil & Refining Co., 26 Fed. (2d) 951.

V. County of Upshur v. Rich, 135 U. S. 467; 10 S. Ct. 651; 34 L. Ed. 196.

Fitts v. McGee, 172 U. S. 516; 19 S. Ct. 269; 43 L. Ed. 535.

Wherefore plaintiff says that this court has no jurisdiction to try and determine this case and prays that the same be removed to the District Court of San Juan, Porto Rico, from whence it came.

San Juan, Porto Rico, August 14, 1930.

James R. Beverley, Attorney General of Porto Rico.
M. Rodriguez Serra, of Counsel.

Notified with copy this fourteenth day of August, 1930.

O. B. Frazer, by R. Castro Fdez, Attorney for Defendant.

[fol. 13] IN UNITED STATES DISTRICT COURT

ANSWER TO AMENDED COMPLAINT—Filed December 19, 1930

Come now Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, constituting the civil agricultural partnership of Russell & Co., Sucesores, S. en C., the defendants in the above-entitled action, by their undersigned attorneys, and answer the amended complaint herein as follows:

1. Defendants admit the allegations of paragraph 1 of the amended complaint except that defendants deny that The People of Porto Rico is a sovereign.

2. Defendants admit that the civil agricultural limited partnership of Russell & Co., Sucesores, S. en C., is now composed of the persons named in paragraph 2 of the amended complaint who have associated themselves in said civil agricultural limited partnership for the purpose of growing sugar cane, and the defendants further admit the citizenship and residence of each of said partners as set forth in said paragraph 2 of the amended complaint, but except as herein admitted the defendants deny the allegations contained in said paragraph 2 of the amended complaint.

3. Answering paragraph 3 of the amended complaint, defendants admit that they have been the owners since before the year 1921 of the parcels of land described in subdivisions (1), (2), (3), (4) of said paragraph 3 of the amended complaint and designated respectively as farm No. 295, called Cristina, farm No. 379, called Hacienda Luciana, farm No. 403, called Hacienda Fortuna, and farm No. 3093, called Hacienda Serrano, but defendants deny that they have been since the year 1921 or now are the owners of the farm No. 413, called Hacienda Union, described in subdivision (5) of paragraph 3 of the amended complaint, and allege that the defendants are and since before the year 1921 have been the sub-lessees of the lands described in said subdivision (5) of paragraph 3 of the amended complaint as farm No. 413, which said lands are [fol. 14] known as Haciendas Union and Placeres.

4. Answering paragraph 4 of the amended complaint, defendants admit that the farms described in paragraph 3 of

the amended complaint have been supplied since the year 1915 and are now being supplied with water for the purpose of irrigation from the Public Irrigation System on the southern side of Porto Rico by virtue of the contract referred to in paragraph 4 of the amended complaint to which said contract, a copy of which is hereto annexed and made a part of this answer marked "Exhibit A", defendants refer for explanation of its terms and provisions and legal effect. Defendants deny upon information and belief that the officials of the Government of Porto Rico charged with the compliance of said contract have complied with the said contract in its entirety and deny upon information and belief that the farms described in paragraph 3 of the amended complaint have received or are receiving all the volume of water agreed for the purposes of irrigation and the defendants further deny that they or their predecessors who executed the contract have benefited therefrom.

5. Defendants admit the allegations contained in paragraph 5 of the amended complaint.

6. Answering paragraph 6 of the amended complaint, defendants deny so much thereof as alleges that in accordance with the provisions of Act No. 49 of 1921 the lands of the defendants described in paragraph 3 of the amended complaint became subject to the payment of a special tax imposed by said Act No. 49 of 1921.

7. Answering paragraph 7 of the amended complaint, defendants deny upon information and belief that the amounts specified in paragraph 7 of the amended complaint have been levied and assessed as taxes against the lands described in paragraph 3 of the amended complaint and defendants further deny upon information and belief that such amounts have been levied in accordance with the provisions of said Act No. 49 of 1921.

[fol. 15] 8. Defendants deny so much of paragraph 9 as alleges that the defendants have obstructed the Treasurer of Porto Rico in the collection of said taxes "by other means".

9. The defendants deny that they owe for the years 1922-23 to 1929-30 the sum of $61,617.04 as taxes and surcharges on the lands described in the amended complaint, or any other sum, and defendants deny that the said sum

of $61,617.04 is due to the plaintiff herein and further deny that the said amount constitutes a just debt in favor of the plaintiff against the defendants herein.

For a first separate and distinct defense the defendants allege as follows:

10. That the defendants are and have been at all times since before the year 1921 the owners in fee simple of the four tracts known as haciendas Fortuna, Cristina, Luciana and Serrano, described in paragraph 3 of the amended complaint as farms Nos. 403, 295, 379 and 309 respectively, and in actual possession thereof and are and have been at all such times by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription the owners of water rights in favor of said lands, for using thereon, for the irrigation thereof, waters from the Jacaguas river, a non-navigable river flowing into the Caribbean Sea, the said water rights appurtenant thereto being generally described as follows:

1. For the tract known as the Hacienda Fortuna, comprising approximately 312.07 hectares of land, the right to take from the river Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year for said Hacienda Fortuna.

2. For the tract known as the Hacienda Cristina, comprising approximately 308.14 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 106.74 liters of water per second, equivalent to 2,728.969 acre feet of water per year for said Hacienda Cristina.

[fol. 16] 3. For the tract known as the Hacienda Luciana, comprising approximately 243.58 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Hacienda Luciana.

4. For the tract known as the Hacienda Serrano, comprising approximately 219.15 hectares of land, the right to take from the river Jacaguas, for irrigation, 102.47 liters of water per second, equivalent to 2,619.769 acre feet of water per year for said Hacienda Serrano.

11. Upon information and belief, that the defendants' predecessors in title had been for upwards of twenty (20)

years prior to August 26, 1914, and the defendants and their predecessors in title at all times since August 26, 1914, have been and defendants are now taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription, to the aggregate amount of 11,032.79 acre feet per year, apart from torrential waters, taking the same from the bed of said river through intakes built and established for the purpose by the defendants predecessors in title.

12. Upon information and belief, that the defendants are and at all times since before the year 1921 have been also the owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, of the right to take and use, for the irrigation of one or more of the estates above mentioned, torrential water from said Jacaguas river; and that defendants' predecessors in title for upwards of twenty years prior to the twenty-sixth day of August, 1914, have been taking and using for the irrigation of said estates and defendants and their predecessors in title at all times since August 26, 1914, have been and defendants are still taking and using for that purpose, torrential waters from the bed of the Jacaguas river during the time of high water, without limit as to quantity, except as limited by the size and location of the torrential [fol. 17] intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription, and by virtue of the contract hereinafter set forth in paragraph 16.

13. That heretofore The People of Porto Rico authorized and undertook the construction of a public irrigation system in accordance with the Public Irrigation Law approved September 18, 1908, as amended, and have in the construction of the said irrigation system erected a dam for the impounding and storage of a part of the waters of the Jacaguas river which is known as the "Guayabal Dam" and extends across the bed of the said Jacaguas river above said intakes which the defendants use and they and their predecessors in title have used for taking and using water for irrigating their said haciendas or estates and the estates Union and Placeres hereinafter mentioned.

14. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the Interior, pursuant to the provisions of said Public Irrigation Law and in order that The People of Porto Rico might lawfully impound the waters of the Jacaguas river behind the Guayabal dam, requested the defendants' predecessors in title to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said concessions, royal decrees, user and prescription, in favor of the four parcels of land described above in paragraph 10 and known as Fortuna, Cristina, Luciana and Serrano, but that its said request was refused.

15. That thereafter The People of Porto Rico, acting through its then Commissioner of the Interior and its then Attorney General, entered into negotiations with Fortuna Estates, one of defendants' predecessors in title, for the purpose of fixing the times and places at which the amount of water other than torrential water which said Fortuna Estates was entitled to take for said haciendas Fortuna, Cristina, Luciana and Serrano, by reason of its rights under the said concessions, royal decrees, user and pre-[fol. 18] scription, should be delivered to it after the Guayabal dam should be completed and in operation owing to the changed conditions resulting therefrom; that as a result of such negotiations, it was agreed by the defendants' predecessor in title, Fortuna Estates, and the then Commissioner of the Interior and the then Attorney General, acting on behalf of The People of Porto Rico, that the water from the Jacaguas river, other than torrential water, to which defendants' said predecessor in title, Fortuna Estates, was, and defendants are, entitled for said haciendas Fortuna, Cristina, Luciana and Serrano by reason of said concessions, royal decrees, user and prescriptions, amounting to 11,032.79 acre feet per year, should be thereafter taken and used by it partly in regular daily amounts aggregating 8,258.98 acre feet per year at various intakes located on its property and that the balance, amounting to 2,773.81 acre feet per year, or 3.86 second feet, should be taken by it at the Aruz pump or intake on said river, from any waters in said river not necessary for supplying the owners of lower concessions subsisting prior to August 26,

1914, with the amounts of water to which they are entitled by virtue of such concessions or of agreements entered into with The People of Porto Rico.

16. That pursuant to such agreement Fortuna Estates, one of defendants' predecessors in title, did on or about the twenty-sixth day of August, 1914, enter into a contract with Ernest S. Wheeler, then Assistant Commissioner of the Interior and discharging the duties and functions of Commissioner of the Interior in Porto Rico, in representation of and on behalf of The People of Porto Rico, which said contract embodied and embodies and was and is intended to embody the agreement described in paragraph 15 hereof; that thereafter and on or about the eighth day of June, 1915, the said contract was in accordance with the terms thereof protocolized and put in the form of a notarial instrument duly executed by said Fortuna Estates and by Manuel V. Domenech, then Commissioner of the Interior of Porto Rico, a copy of which contract is hereto annexed [fol. 19] marked "Exhibit A" and made a part hereof as fully as if it were set out at length herein. That by said contract the said water right of said Fortuna Estates for said haciendas were recognized and continued in full force and effect and in no wise relinquished, the mode of receiving the water being temporarily modified but the right thereto and the amount thereof being left unchanged; that in carrying on the negotiations referred to hereinabove in paragraph 15, and in executing the contract mentioned in this paragraph, the said Commissioner of the Interior acted under the authority of the Act of the Legislature of Porto Rico, approved August 8, 1913, which Act duly recognized the property rights of holders of Spanish concessions, among whom was defendants' predecessors in title Fortuna Estates.

17. That thereafter Fortuna Estates duly sold, assigned and transferred to the defendants its title to the four parcels of land described above in paragraph 10 and all its rights, benefits and privileges under the concessions referred to hereinabove in paragraphs 10, 11 and 12 and otherwise, and all its rights, title and interest in and to said contract described in the preceding paragraph and all waters to which it might be entitled thereunder.

18. Upon information and belief, that Jose A. Poventud, and Sergio Torruella Cortada and the Sucesion de J. Serralles are and they and their predecessors in title at all times since before the year 1921 have been the owners in fee simple of the two tracts of land situated in the municipality of Juana Diaz, Island of Porto Rico, known as haciendas Union and Placeres and described in paragraph 3 of the amended complaint as farm No. 413 and, through their sublessees, the defendants herein are and at all times since prior to the year 1921 have been in actual possession thereof and are and have been during such times by virtue of certain concessions royal decrees of the Kingdom of Spain, user and prescription, the owners of water rights in favor of said lands, for using thereon for the irrigation thereof waters from the said Jacaguas river, a non-navi- [fol. 20] gable river flowing into the Caribbean Sea, the said lands and said water rights appurtenant thereto being generally described as follows:

1. One tract known as the Hacienda Union, comprising approximately 150.14 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for the said Hacienda Union.

2. One tract known as the Hacienda Placeres, comprising approximately 240.54 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof, 22.00 liters of water per second, equivalent to 565.75 acre feet of water per year for the said Hacienda Placeres.

That heretofore and prior to the year 1921 the owners of said two tracts of land executed a lease for a term of years in favor of defendants' predecessors in title and incidentally thereto assigned to defendants' predecessors in title all their rights whether by concessions, royal decrees, user and prescription or contract, for the taking of water for said lands, that under the terms of said lease and lessee is obligated to pay any taxes which may be assessed against the said lands.

19. Upon information and belief, that the said owners of said two parcels of land and their predecessors in title and

defendants' predecessors in title, as lessees, had been for upwards of twenty years prior to August 26, 1914, taking and using and the defendants and their predecessors in title, as lessees, have been at all times since August 26, 1914, and defendants are now taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription.

20. Upon information and belief, that said Jose A. Poventud and Sergio Torruella Cortada and the Sucesion de J. Serralles are also owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription of the right to take and use torrential waters from the Jacaguas river for the irrigation of said haciendas de- [fol. 21] scribed above in paragraph 18 and known as Union and Placeres; and that said Jose A. Poventud and Sergio Torruella Cortada and Sucesion J. Serralles and their predecessors in title through defendants and their predecessors in title as lessee for upwards of twenty years prior to the twenty-sixth day of August, 1914, have been taking and using for the irrigation of said estates, and defendants are still taking and using for that purpose, torrential waters from the bed of the Jacaguas river during the time of high water, without limit as to quantity, except as limited by the size and location of the torrential intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription, and by virtue of the contract hereinafter set forth in paragraph 23.

21. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the Interior pursuant to the provisions of the said Public Irrigation Law and in order that The People of Porto Rico might lawfully impound the waters of the Jacaguas river behind the Guayabal dam, requested the predecessors in title of said Jose A. Poventud, Sergio Torruella and Sucesion J. Serralles and defendants' predecessors in title to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said concessions, royal decrees, user and prescription in favor of the two parcels of land described above in paragraph 18

and known as Union and Placeres, but that its request was refused.

22. That subsequently to the acts set forth in paragraph 21 hereinabove The People of Porto Rico, acting through its then Commissioner of the Interior and its then Attorney General, entered into negotiations with the then owners, Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, the predecessors in title of the said present owners and with Fortuna Estates, the predecessors in title of defendants as lessee, for the purpose of fixing the times and places at which the amount of water other than torrential waters [fol. 22] which the said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada, and Sergio Torruella Cortada and said Fortuna Estates as their lessee, were entitled to take for said haciendas Union and Placeres by reason of their rights under the said concessions, royal decrees, user and prescription, should be delivered to them after the Guayabal dam should be completed and in operation owing to the changed conditions resulting therefrom; that as a result of such negotiations it was agreed by said owners Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada and by defendants' said predecessor in title, Fortuna Estates, and the then Commissioner of the Interior and the then Attorney General acting on behalf of The People of Porto Rico that the water from the Jacaguas river other than torrential water to which said owners and defendants' said predecessors in title were and said present owners and defendants are entitled for the said haciendas Union and Placeres by reason of said concessions, royal decrees, user and prescription amounting to 1,579.31 acre feet of water per year should be thereafter taken and used by them partly in regularly daily amounts aggregating 946.55 acre feet per year at various intakes located on their property.

23. That pursuant to said agreement said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, being the predecessors in title of the said present owners, and the lessee Fortuna Estates, being the predecessors in title of defendants, did on or about the twenty-sixth day of August, 1914, enter into a contract with Ernest S. Wheeler, then Assist-

ant Commissioner of the Interior and discharging the duties and functions of the Commissioner of the Interior of Porto Rico in representation of and on behalf of The People of Porto Rico, which said contract embodies and was and is intended to embody the agreement described in paragraph 22 hereof, and a copy of which contract is hereto annexed marked "Exhibit B" and made a part hereof as fully as if it were set out at length herein. That by said [fol. 23] contract the said water rights of said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, and their lessee, Fortuna Estates, for said haciendas Union and Placeres were recognized and continued in full force and effect and in no wise relinquished, the mode of receiving the water being temporarily modified but the right thereto and the amount thereof being left unchanged; that in carrying on the negotiations hereinabove referred to in paragraph 22 and in executing the contract mentioned in this paragraph, the said Commissioner of the Interior acted under the authority of the Act of the Legislature of Porto Rico, approved August 8, 1913, which Act duly recognized the property rights of holders of Spanish concessions, among whom were Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, the predecessors in title of said present owners, and said Fortuna Estates, the predecessors in title of the defendants.

24. That thereafter Fortuna Estates, being then the lessee of the said haciendas Union and Placeres with all water rights benefitting said property or the owners thereof and being lessees thereof for a term of years, duly sold, assigned and transferred to the defendants its leasehold title to said haciendas Union and Placeres described above in paragraph 18 and all rights, benefits and privileges to which it and its assignors were or might be entitled under the concessions referred to hereinabove in paragraphs 18 and 19 and otherwise and in and to said contract described in the preceding paragraph and all waters to which it or its said lessors might be entitled thereunder.

25. That heretofore, by a decree of this court entered July 16, 1918, in Equity case No. 970, entitled "Russell & Co., S. en C., Complainant, v. Emilia V. Henna et al., De-

fendants, and The People of Porto Rico, Intervenor", affirmed by the Circuit Court of Appeals, First Circuit, on appeal taken by The People of Porto Rico, the defendants' right to water under said contract of August 26, 1914, in favor of haciendas Fortuna, Cristina, Luciana and Serrano [fol. 24] was adjudicated valid and existing and a perpetual injunction was issued against The People of Porto Rico enjoining it and its agents and employees from diverting or obstructing the waters of the Jacaguas river other than those required for concessions existing in said river prior to August 26, 1914; that there has been no change whatsoever in the rights of defendants as to said haciendas Fortuna, Cristina, Luciana and Serrano from the time of said decree to the present time.

26. That the rights of said Jose A. Poventud and Sergio Torruella Cortada and Sucesion J. Serralles and defendants, their lessees, to take water under said contract of August 26, 1914, in favor of haciendas Union and Placeres is now and at all times has been in every way similar to the rights to water under said contract of August 26, 1914, in favor of haciendas Fortuna, Cristina, Luciana and Serrano.

27. That neither the defendants herein nor the said lands hereinabove described have received nor are they now receiving nor have they been supplied nor are they now being supplied with any water for the irrigation of said lands from the Southern Coast Public Irrigation System except such waters as the said defendants and the said lands were and are entitled to receive under and by virtue of said concessions, royal decrees of the Kingdom of Spain, user and prescription and under and by virtue of said contracts of August 26, 1914, hereinabove set forth.

28. That the Act No. 49 of 1921 approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", under which Act the plaintiff herein claims the right to levy the taxes and surcharges herein sued for, in so far as said Act No. 49 of 1921 purports to levy and impose a tax upon the said lands hereinabove described, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of

[fol. 25] the Constitution of the United States and the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act No. 49 of 1921 impairs the obligation of the said contracts of August 26, 1914, hereinabove referred to, which said contracts are now and were at the time of the passage of the said Act No. 49 of 1921 valid and existing.

For a second separate and distinct defense the defendants allege:

29. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

30. That in so far as the said Act No. 49 of 1921, under which the plaintiff herein claims the right to levy the taxes and surcharges herein sued for, purports to levy a tax upon the lands hereinabove described, said Act No. 49 of 1921 is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and of the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that the said Act purports to levy a special assessment against said lands without any corresponding benefit to said lands or the owners thereof, thus depriving the defendants herein of their property without due process of law.

For a third separate and distinct defense the defendants allege:

31. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

[fol. 26] 32. That the Act No. 49 of 1921 under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, in so far as said Act No. 49 pur-

ports to levy a tax upon the lands hereinabove described, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to confiscate property rights of the defendants, to wit, the said water rights attached and annexed to the said lands, thus depriving defendants of their property without due process of law and taking private property for public use without just compensation.

For a fourth separate and distinct defense the defendants allege:

33. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

34. That the Act No. 49 of 1921, under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, in so far as said Act purports to levy a tax upon the lands hereinabove described, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to confiscate property rights of the defendants, to wit, the said water rights existing by virtue of the said contracts of August 26, 1914, hereinabove set forth, thus depriving defendants of their property without due process of law and taking private property for public use without just compensation.

[fol. 27] For a fifth separate and distinct defense the defendants allege:

35. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth, and incorporate the

same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

36. That the said Act No. 49 of 1921 under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, in so far as said Act purports to levy any tax upon the lands hereinabove described, is null and void and without any legal force or effect whatsoever because said Act No. 49 of 1921 is in contravention of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to impose a tax upon the said property of the defendants and not upon other property in the Island of Porto Rico, thus violating the requirement of uniformity contained in said Organic Act.

For a sixth separate and distinct defense the defendants allege:

37. The defendants repeat and re-allege each and every one of the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the first defense hereinabove set forth and incorporate the same herein by reference thereto as fully and with the same force and effect as though set forth at length herein.

38. That the said Act No. 49 of 1921 under which the plaintiff claims the right to levy the taxes and surcharges sued for herein, in so far as said Act purports to levy any tax upon the lands hereinabove described, is null and void and without any legal force or effect whatsoever because said Act No. 49 of 1921 is in contravention of the Treaty of 1898 with Spain, known as the Treaty of Paris, in that said Act impairs and destroys property rights of the defendants which were granted by the Spanish Government [fol. 28] and were existing and valid at the time of the execution and promulgation of the said Treaty.

For a seventh separate and distinct defense the defendants allege:

39. That the Act No. 49 of 1921, approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes",

under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Organic Act of Porto Rico, known as the Jones Act, in that said Act purports to impose the tax therein provided for upon a limited class of lands arbitrarily selected and irrespective of benefits conferred, thus violating the prohibition contained in the said Organic Act against unequal protection under the law.

For an eighth separate and distinct defense the defendants allege:

40. That the Act No. 49 of 1921, approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, is null and void and without any legal force or effect because said Act No. 49 of 1921 is in contravention of the Constitution of the United States and of the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act No. 49 of 1921 delegates to administrative officers the legislative function of levying the tax therein provided for.

[fol. 29] For a ninth separate and distinct defense the defendants allege:

41. That Act No. 49 of 1921, approved on or about the eighth day of July, 1921, and entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", under which the plaintiff herein claims the right to levy the taxes and surcharges sued for herein, is null and void and without any legal force or effect because Act No. 49 of 1921 is in contravention of the Constitution of the United States and of the amendments thereto and of the Organic Act of Porto Rico, known as the Jones Act, in that said Act No. 49 of 1921 provides for the determination of the amount and application of

taxes payable thereunder and the collection thereof by the Treasurer, and no provision is made in said Act for the notification of or holding of any hearing at which the defendants or other landowners might appear and contest the amount of said taxes nor for hearing de novo on appeal, nor for judicial review of any kind, thus depriving the defendants of their property without due process of law.

For a partial defense the defendants allege:

42. That heretofore and on or about the twelfth day of June, 1926, pursuant to a final decree of this court entered June 11, 1926, in equity case No. 1250, entitled "Horace Havemeyer et al., Complainant, v. Juan G. Gallardo, Defendant", the defendants herein obtained after trial on the merits in this court an injunction forever restraining the assessment or collection of any tax under or pursuant to the Act No. 49 of 1921, approved on or about July 8, 1921, against the defendants or the lands hereinabove described; that an appeal was thereafter taken from said final decree to the Circuit Court of Appeals, First Circuit, which appeal was pending before said Circuit Court of Appeals on March 4, 1927, and abated solely by reason of the provisions of the Act entitled: "An Act to amend and reenact sections 3, 20, 31, 33, 38 and 48 of [fol. 30] the Act of March 2, 1917, entitled 'An Act to provide a civil government for Poto Rico, and for other purposes', as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as '5a' of said Act."

43. That this suit is brought by the plaintiff herein pursuant to and under the authority contained in the public Act No. 302 of the Seventieth Congress of the United States, approved April 23, 1928, and entitled "An Act for the relief of certain Porto Rican taxpayers".

44. That more than one year had elapsed between the date of the approval of said Act No. 302 and the date of the institution of this suit and the cause of action alleged in the amended complaint, in so far as the same relates to taxes enjoined by said injunction of June 12, 1926, is

barred in accordance with the provisions of said Public Act No. 302.

Wherefore the defendants pray judgment dismissing the amended complaint herein with costs.

San Juan, Porto Rico, December 19, 1930.

William J. Gilleran, Ryder Patten, Attorneys for Defendants.

Duly sworn to by William J. Gilleran. Jurat omitted in printing.

[fol. 31] Copy of the within answer and Exhibits A and B received this nineteenth day of December, 1930.

James R. Beverley, Attorney General, Attorney for Plaintiff.

EXHIBIT A TO ANSWER

Irrigation Contract

Number Twenty

In the City of San Juan, Island of Porto Rico, on this eighth day of June, A. D. nineteen hundred fifteen before me, Frank Antonsanti, attorney at law and notary public, with office in the Royal Bank Building, San Juan, Porto Rico, and duly licensed to practice throughout the Island, personally appeared: Manuel V. Domenech, who is of age, married, a resident of this city, by profession a civil engineer, and at the present time Commissioner of the Interior of Porto Rico, which function he has been discharging since the twenty-ninth day of October, A. D. nineteen hundred fourteen, as party of the first part, and Julius Umbach, who is of lawful age, married, a merchant and a resident of the City of Ponce, as party of the second part.

The party of the first part appears in his official ca-[fol. 32] pacity of Commissioner of the Interior of Porto Rico, and in representation and on behalf of The People of Porto Rico, and the party of the second part does so as attorney in fact and on behalf of the Fortuna Estates, which is a corporation organized under the laws of the

State of New York, having its principal office in Porto Rico in the City of Ponce.

I, the notary, hereby certify as to being personally acquainted with the appearing parties they assuring me that they are in the full enjoyment of their civil rights, which fact as well as the respective representations of the said parties is personally known to me.

The said appearing parties thereupon freely state:

That on the twenty-sixth day of August, A. D. nineteen hundred fourteen, a certain private contract was entered into by and between Ernest S. Wheeler, as Assistant Commissioner of the Interior of Porto Rico, at the time acting as Commissioner of the Interior in representation and on behalf of The People of Porto Rico, as party of the first part, and the Fortuna Estates, represented by its attorney in fact Julius Umbach, as party of the second part, and which contract is fully transcribed hereinafter.

That by virtue of the said private contract hereinbefore referred to and which was acknowledged before M. Manuel Toro and Damian Monserrat, notaries public, on the twenty-sixth and twenty-eighth of August, nineteen hundred fourteen, and as specifically provided by clause sixteenth thereof, it was agreed by the parties thereto that a public document should be drawn embodying the said private agreement, at the request of either of the parties to said contract, and, the parties thereto and hereto having mutually expressed their desire at this time to embody the said private agreement in a public document, for carrying into effect their desire, they hereby state:

That the private agreement as entered into by and between the parties thereto is as follows, to wit:

[fol. 33] Fortuna Estates Contract

Memorandum of Agreement made this twenty-sixth day of August, 1914, between Ernest S. Wheeler, Assistant Commissioner of the Interior, discharging since January 17, 1914, the duties and functions of Commissioner of the Interior of Porto Rico, now in the discharge of such duties and functions and in possession of said office and acting as such Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, party of the first part, and the Fortuna Estates, a New York corporation, party of the second part.

Whereas, Fortuna Estates is the owner in fee simple of four (4) tracts of land situated in the municipality of Juana Diaz, in the district of Ponce, in the Island of Porto Rico, and claims as appurtenant thereto, by virtue of certain concessions, royal decrees of the Kingdom of Spain and user, the right to use thereon waters from the River Jacaguas for the irrigation thereof, the said lands and water rights being generally described as follows:

1. One tract known as the Estate "Fortuna", comprising approximately 312.07 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year for said estate "Fortuna."

2. One tract known as the Estate "Cristina", comprising approximately 308.14 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 108.74 liters of water per second, equivalent to 3,728.969 acre feet of water per year from said Estate "Cristina."

3. One tract known as the Estate "Luciana", comprising approximately 243.58 hectares of land, with an appurtenant right to take from the River Jacaguas, for the irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Estate "Luciana."

4. One tract known as the Estate "Serrano", comprising approximately 219.15 hectares of land, with an appurtenant [fol. 34] right to take from the River Jacaguas, for the irrigation thereof, 102.47 liters of water per second, equivalent to 2,619.769 acre feet of water per year for said Estate "Serrano."

And whereas, Fortuna Estates and its predecessors in title have been for upwards of twenty years and are now taking waters from the River Jacaguas for irrigation of said tracts of land, and claims to have been doing so under and by virtue of the said concessions and the said royal decrees of the Kingdom of Spain, granting, approving and confirming the water rights aforesaid (a list of said concessions and decrees being hereto annexed and marked

"Schedule A"), such waters having been taken from the bed of said River Jacaguas through intakes built and established for the purpose by the predecessors in title of the Fortuna Estates, and

Whereas, Fortuna Estates also claims the right to take for the irrigation of the said four (4) tracts of land hereinabove mentioned torrential waters from the bed of the Jacaguas River during the time of high water without limit as to quantity except as limited by the size and the location of the intakes and the canals leading therefrom to the respective tracts of land aforesaid (a list of the concessions therefor being hereto annexed and marked "Schedule B"), and the said rights for the taking and use of such torrential waters have been exercised by the Fortuna Estates and its predecessors in title for upwards of twenty years, and are now so exercised; and

Whereas, The People of Porto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of the said irrigation system, erected a dam (known as the Guayabal Dam), across the bed of the said Jacaguas River above the said intakes which the said Fortuna Estates uses for taking water for irrigating its said four tracts of land in accordance with its said claim of right and The People of Porto Rico proposes to use the said dam for the impounding and storage of a [fol. 35] part of the waters of the River Jacaguas and of the River Toro Negro, a stream rising on the north side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which the Fortuna Estates claims to be entitled to by reason of the aforesaid concession, royal decrees and user for the irrigation of the four tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico, and said Fortuna Estates is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water rights and concessions; and

Whereas, the amount of water taken by the Fortuna Estates and its predecessors in title for the irrigation of said four tracts of land under its said claims of water rights

varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas River, so that it is impossible to determine in advance the exact amount of water to which the Fortuna Estates is entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal dam), is ready to deliver from the said Jacaguas River to the said Fortuna Estates the amount of water to which the latter may be entitled under its said concessions, but, in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part, desires to determine and agree upon an amount of water which, delivered regularly, may under all attending circumstances, be considered to be fair equivalent in value for irrigation purposes of the amount of water which the Fortuna Estates would under ordinary circumstances take and use under the said water rights and concessions; and

Whereas, the Commissioner of the Interior is authorized and empowered, by Section 13 of the amendment to the Public Irrigation Law, approved August 8, 1913, after consulting with the Attorney General of Porto Rico as to the [fol. 36] validity and legal status of the said water rights or concessions, to enter, on behalf of The People of Porto Rico, into agreement with the owner of the said water rights or concessions upon an amount of water equivalent to the water taken and used under said water rights and concessions and as to the time, place and conditions of delivery thereof to the lands to which the said water rights or concessions are appurtenant; and

Whereas, the Attorney General of Porto Rico has been duly consulted, as provided by said Act;

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereinafter contained, said Acting Commissioner of the Interior, in representation and on behalf of The People of Porto Rico, do hereby covenant and agree as follows:

First. The parties hereto hereby agree that the quantities of water specified in this paragraph, delivered uniformly through the year, subject to the terms and conditions specified in this agreement, together with the additional water the right to take which is provided for or reserved

in paragraphs Third and Fourth hereof, are the fair equivalent in value of the water which the said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, make delivery to the Fortuna Estates, for the irrigation of the said tracts of land hereinabove referred to, of the said amounts of water, to wit:

For the Estate Fortuna, 3,306.45 acre feet per year;
For the Estate Cristina, 1,312.48 acre feet per year;
For the Estate Luciana, 1,260.22 acre feet per year;
For the Estate Serrano, 2,379.83 acre feet per year.

The waters so to be delivered shall be delivered, subject to the conditions hereinbelow expressed, in substantially equal quantities from day to day, to wit:

For the Estate Fortuna, 9.06 acre feet daily;
[fol. 37] For the Estate Cristina, 3.59 acre feet daily;
For the Estate Luciana, 3.45 feet daily;
For the Estate Serrano, 6.52 acre feet daily.

Second. The People of Porto Rico will deliver the said water as follows:

(a) The water deliverable hereunder for the Estate Fortuna, at the intake provided by Fortuna Estate for a reservoir established on the Estate Cristina.

(b) The water deliverable hereunder for the Estate Cristina, as follows:

741.21 acre feet per annum at the intake provided by Fortuna Estates for a reservoir established on the Estate Cristina, and

571.27 acre feet per annum in the bed of the river to be taken by pump at a pumping station heretofore established by the Fortuna Estates near the right bank of the said Jacaguas River, known as the Aruz Pumping Station.

(c) The water deliverable hereunder for the Estate Serrano, at the present low-water intake of that Estate on the Jacaguas River.

Exempt in the cases of shortage of water in the reservoir behind the Guayabal Dam hereinafter provided for, the presence of water in the river bed at the intakes of the

Aruz pumping station and the Serrano Canal, respectively, in quantities sufficient to permit the taking at the said intakes of the amounts of water specified shall be deemed to be deliveries in accordance with the last two provisions.

The People of Porto Rico, however, reserves the right, upon giving twenty-four hours' notice to the manager or other person in authority of the Estate Serrano to deliver such water at the intake established by Fortuna Estates for the reservoir upon the Estate Cristina.

(d) The water deliverable hereunder for the Estate Luciana, at the intake provided by Fortuna Estates for a reservoir established on the Estate Luciana.

Third. Fortuna Estates is hereby granted the right while [fol. 38] this agreement remains in force to take in addition to all amounts of water above specified, from the Jacaguas River by pump at the said Aruz Pumping Station, water which may be available there for irrigation of any of its said lands, to the extent that such taking shall not deprive any owners or users of subsisting water rights or concessions upon the Jacaguas River of the water to which such owners or users may be entitled, either by virtue of such water rights or concessions or by virtue of any agreement or agreements in regard thereto entered into or to be entered into by them with The People of Porto Rico; Provided, however, that should The People of Porto Rico at any time undertake the development and utilization of the surplus waters of this part of the Jacaguas River, this right shall be understood to be limited to a maximum usage of 3.86 second feet.

The Fortuna Estates shall maintain at the said Aruz Pumping Station an accurate and appropriate measuring device for the measurement of the water taken from the river at such station, which shall at reasonable times be subject to inspection by the properly accredited employees of the Irrigation Service.

Fourth. In addition to the amounts of water hereinbefore set forth, the Fortuna Estates hereby reserves and shall have the right to take torrential waters from the Jacaguas River through its head-gates at present existing for the use of torrential waters. Such head-gates, wherever they do

not conform to the terms of the concession, shall be reconstructed in conformity therewith, and such use of torrential waters shall be subject to such priorities in the use of torrential waters as may exist in the said Jacaguas River. The foregoing provision, however, shall not in any way limit The People of Porto Rico from restraining all of the torrential flood waters which it may desire and which it may be legally entitled to restrain in the reservoir above the Guayabal dam.

To the extent that there may be waters derived through underground filtration or seepage from the River Jacaguas or its tributaries or from the reservoir maintained behind [fol. 39] the said Guayabal dam, which rise to or near the surface of the ground within the boundary lines of any so-called "poyal" or "semi-poyal" portions of any of the tracts of land owned, leased, operated or cultivated by the Fortuna Estates, its successors or assigns, or any waters so derived in wells made or to be made upon any portions of said lands or any of them, which are not strictly subterranean waters, within the meaning of that term as used in the Laws of Porto Rico, and the full property of the owner or possessor of said lands, the said Fortuna Estates, its successors, lessees and assigns, while this agreement remains in force, may make use of the said waters and all portions thereof in such manner and for such purposes as it or they shall from time to time elect without payment or responsibility to The People of Porto Rico for or in respect thereto, except in so far as such right and the means adopted or to be adopted for its exercise may be limited, modified or restricted by the provisions of the Law of Waters.

Fifth. During ten days in each year, while this agreement is in force, The People of Porto Rico shall deliver to said Fortuna Estates, and the latter may take and use, at its present intakes in the Jacaguas River (as indicated upon the annexed chart furnished by Fortuna Estates marked "Schedule C") built and used for said respective tracts of land, in lieu of all quantities of water elsewhere specified in this agreement except in Section "Fourth" the amount of water which said Estates claims to be entitled to take for each of said four tracts of land under the said concessions and water rights, to wit:

For the Estate Fortuna, 139.75 liters of water per second;
For the Estate Cristina, 106.74 liters of water per second;
For the Estate Luciana, 82.54 liters of water per second;
For the Estate Serrano, 102.47 liters of water per second.

The presence of water in the river bed of the Jacaguas River, at the openings of the said intakes, in quantities sufficient to permit the taking by the Fortuna Estates of the quantities of water specified in this paragraph, shall be deemed a delivery in accordance with this paragraph on behalf of The People of Porto Rico.

[fol. 40] Forty-eight hours' notice shall be given, by or on behalf of the Irrigation Service, to the manager of or other person in authority upon the Fortuna Estates, of the proposed delivery of water to the Fortuna Estates in accordance with the other terms of this section instead of in accordance with the other terms of this agreement.

Sixth. Whenever and as long as there is no storage water in the reservoir behind said Guayabal dam, The People of Porto Rico shall deliver, subject to the terms of this agreement, to the Fortuna Estates the quantities of water herein provided for from the flow of the Jacaguas River exclusive of water added thereto from the Toro Negro River; but such delivery shall be subject to be cut off or diminished when and so long as and to the extent that such flow is insufficient to supply all water deliverable to the owners or users of subsisting valid water rights or concessions having priorities for the use of the waters of the Jacaguas River (whether by virtue of such rights or concessions, or by virtue of agreements with regard thereto entered into between such owners or users and the Commissioner of the Interior or any other person or body authorized by law to enter into such agreements in representation of The People of Porto Rico) in accordance with the "Order of Suspension" established in the Definitive Table of Distribution of the River Water of the Jacaguas, approved by Royal Decree of June 8, 1880, a copy of which is hereto annexed marked Schedule D.

The People of Porto Rico shall have the right to divert from the reservoir behind the Guayabal dam into the Juana Diaz Canal, or any other canals of the Irrigation System, the amount of water flowing into the reservoir from the

Toro Negro River or from any other sources than the Jacaguas River, whether or not there is any storage water in the Guayabal Reservoir; and it is further understood and agreed by and between the parties, that, as far as the Fortuna Estates is concerned, The People of Porto Rico may divert all the waters of the Jacaguas River, after providing for the delivery to the Fortuna Estates of the waters [fol. 41] to which it is entitled, as specified in this agreement, into the Juana Diaz Canal or any other canals, ditches or reservoirs of the Irrigation System.

It is understood and agreed that the expression "storage water" does not include water in the said reservoir not rising to a height more than three feet above the bottom of the outlet gates to the Juana Diaz Canal.

Seventh. In the event that, for any cause, whether within or beyond the control of The People of Porto Rico (except in the case hereinbefore provided for), the delivery of water to the Fortuna Estates at any point shall be temporarily, partly or wholly interrupted, The People of Porto Rico shall, during the continuance of such cause, deliver an equivalent amount of water to the Fortuna Estates at some other point in the irrigation canals of Fortuna Estates to be selected by the Irrigation Service.

Eighth. In the event that the Fortuna Estates, its successors or assigns, shall at any time determine that it is to its or their best interest to discontinue the use of the storage reservoirs constructed upon the Estates Cristina and Luciana, the waters to be delivered into such reservoirs, as hereinabove agreed, shall be delivered either into the present intakes in the Jacaguas River appurtenant to the lands in question or at such other point or points upon or adjacent to said lands as the Fortuna Estates, its successors or assigns shall determine: Provided, however, that such delivery at places other than said present intakes shall be made without loss of water to The People of Porto Rico, and that all extra expenses occasioned by such delivery shall be borne by the Fortuna Estates, its successors or assigns.

Ninth. The People of Porto Rico consents that, to the extent that the owners or users of valid and subsisting water rights may not be prejudiced, the Fortuna Estates

may apply the water deliverable hereunder or any part of it to the irrigation of any of the lands hereinbefore described or any parts or portion thereof.

Tenth. It is further specifically understood and agreed by and between the parties hereto that any temporary or [fol. 42] other arrangement or agreement made between the said Fortuna Estates, its successors, lessees or assigns, or any official or representative thereof and any official of the Government of Porto Rico with respect to the taking and use of waters from the River Jacaguas, the measurement of such waters, the building of reservoirs, canals, siphons and pipe lines, the diversion of waters from one tract of land to another, the time during which waters shall be deliverable from time to time, the amount of water to be delivered at any point or points at any time or times, the purchase of surplus water from time to time, or any other matters connected with the use of the said waters of the Jacaguas River, and the irrigation therewith of the lands owned, leased and cultivated by the Fortuna Estates, its successors or assigns, shall at all times and for all purposes be deemed to be subject to the terms and provisions of this agreement, and shall not affect or modify the same or be deemed or considered so to do or to affect or prejudice the rights of either party hereunder.

Eleventh. It is agreed by both parties that the delivery to and the use by the Fortuna Estates of water in accordance with the terms and conditions expressed in this agreement shall not in any event affect or modify the present existing status of the water rights and concessions claimed by the said Fortuna Estates; but that such delivery and use is to be made in view of the modified physical conditions resulting in the bed of the River Jacaguas from the establishment of the public irrigation system, which on the one hand henceforth permit the delivery to and the use by the Fortuna Estates of a substantially uniform flow of water, as provided in this agreement, and on the other modifies to some extent the use of the water heretofore made by the Fortuna Estates; that such delivery and use shall continue as long as such modified conditions continue to exist, and in the event of the total or partial destruction of the Guayabal dam, or of the main canal

known as the Juana Diaz Canal, connected therewith, from any cause whatsoever, and the resulting inability of The People of Porto Rico to comply with the terms of [fol. 43] this agreement, the Fortuna Estates may forthwith exercise such rights as it has under the said concessions and grants, but as soon as The People of Porto Rico shall have reestablished or reconstructed the works so destroyed in substantially the same form as at present constructed, or in such a manner as to enable it to perform substantially the terms of this agreement, this agreement shall be revived and be in full force and effect from such time.

Twelfth. Neither the execution of this agreement by the Fortuna Estates nor the acceptance and use of water delivered to it as herein provided, nor any consent, waiver or permission given or held to be given hereby or hereunder, nor any failure on the part of the Fortuna Estates, acting in accordance with this agreement to take and use water in accordance with the exact terms of its said concessions and water rights, or any of them, nor anything done or suffered by said Fortuna Estates hereunder or in accordance with the terms hereof or pursuant to the provisions herein contained, shall at any time or for any purpose be deemed to affect, modify or change to any extent the status of the said water rights and concessions claimed by the Fortuna Estates as existing at the time this agreement was entered into, or to limit or prejudice any rights or privileges which the Fortuna Estates, its successors or assigns, may have under or by virtue of the said concessions, and the grants and decrees respecting the same hereinabove described, or by virtue of the use of the said water of said Jacaguas River, heretofore made by it and its predecessors in title.

Thirteenth. In the event of the permanent abandonment by The People of Porto Rico of said irrigation system utilizing the waters of the Jacaguas River, or in the event that The People of Porto Rico or the official or officials body in charge of the irrigation service shall be enjoined or restrained by final order or decree of any court of competent jurisdiction from carrying out the provisions of this agreement, then this agreement shall become null and of no force and the Fortuna Estates shall be entitled to

the exercise of any and all the rights which it had at the [fol. 44] time this agreement was entered into as if this agreement had never been entered into or performed in whole or in part by either party hereto; and in the event that The People of Porto Rico or the official or officials body in charge of the irrigation service shall, without reasonable cause, fail or refuse to deliver water to the Fortuna Estates, its successors or assigns, substantially as herein agreed, then and in any such event, and for so long as said failure or refusal shall continue, the Fortuna Estates shall be entitled to the exercise of any and all the rights which it had at the time this agreement was entered into as if this agreement had never been entered into or performed in whole or in part by either party hereto.

Fourteenth. Nothing in this agreement contained shall be taken to impair or abridge such right as The People of Porto Rico may have to modify, enlarge or improve any of the works or structures of the irrigation system, or to add other works or structures thereto.

Fifteenth. This agreement shall apply to, benefit and bind the successors, lessees and assigns of the parties hereto to the same extent that it applies, benefits and binds such parties.

Sixteenth. The party of the first part hereby agrees that upon the request of the party of the second part, the party of the first part or the officer or official who may at the time be discharging the functions of the Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, will execute a public document embodying this agreement in conjunction with the party of the second part, and the party of the second part hereby agrees that it will execute, upon the request of any Commissioner of the Interior of Porto Rico, duly appointed and acting as such, or in case the office of Commissioner of the Interior shall be abolished by Act of Congress, then and in such event upon the request of the officer or official duly appointed under an Act of Congress to perform the duties and functions now performed by the Commissioner of the Interior, a public document embodying this agreement, and each party hereby agrees [fol. 45] that it will cooperate with the other in taking all

steps necessary to have this agreement or the public document embodying the same duly recorded in the proper Registry of Property and will execute or cause to be executed such documents and papers as may be necessary or proper to this end; and it is further specifically agreed that failure on the part of either party to comply with the provisions of this clause Sixteenth shall constitute a total breach of this agreement and that the other party hereto, unless such breach be waived by it, shall thereupon be entitled to the exercise of any or all of the rights it had at the time this agreement was entered into, as if this agreement had never been entered into or performed in whole or in part by either party hereto.

In witness whereof The People of Porto Rico have caused these presents to be signed by the Acting Commissioner of the Interior, acting in representation and on behalf of The People of Porto Rico, and Fortuna Estates has caused these presents to be signed by its attorney in fact, Julius Umbach, all on the day and year first hereinabove written.

E. S. Wheeler, Acting Commissioner of the Interior.
Jul Umbach, Attorney in fact of Fortuna Estates.

Witness-: M. Lozano, F. Manuel Toro.

Affidavit No. 400

Island of Porto Rico,
City of Ponce, ss:

On this t-enty-sixth day of August, 1914, before me, a notary public, personally came and appeared Julius Umbach of age, merchant, a resident of the City of Ponce, to me personally known, and acknowledged that he signed the foregoing instrument as attorney in fact of Fortuna Estates.

F. Manuel Toro, Notary Public.

[fol. 46] Affidavit No. 1397

Notaria de Monserrat

Island of Porto Rico,
City of San Juan:

On this twenty-eighth day of August, 1914, before me a notary public, personally came and appeared Ernest S. Wheeler, of age, married, Acting Commissioner of the In-

terior, a resident of the City of San Juan, to me personally known, and acknowledged that he executed the foregoing instrument in representation and on behalf of The People of Porto Rico.

Damian Monserrat, Notary Public.

SCHEDULE "A"

Names of the property	Dates of irrigation concessions	Dates of royal decrees
Luciana	December 23, 1848	June 8, 1880
Cristina	March 17, 1852	June 8, 1880
Fortuna	October 5, 1846	June 8, 1880
Serrano	September 26, 1845	June 8, 1880

SCHEDULE "B"

Names of the properties	Dates of concessions	Torrential width of intakes	Royal decrees
Luciana	September 1, 1878	1 meter	June 8, 1880
Fortuna	January 10, 1879	1 meter	June 8, 1880
Serrano	November 21, 1878	1 meter	June 8, 1880

J. U.

At the termination of the above contract and Schedules "A" and "B" there also appears another schedule marked "D" referring to certain water distributions, and also Schedule "C" which is a blue print and it being impracticable to copy these two last mentioned documents in this instrument, the originals thereof are hereto annexed and made a part hereof and are herein protocolized and made a part of this document, from which copies should be issued hereafter.

The appearing party, Manuel V. Domenech, in repre- [fol. 47] sentation of and on behalf of The People of Porto Rico, and the appearing party Julius Umbach, in representation of and on behalf of the Fortuna Estates, declare and agree that the private contract hereinbefore referred to, copied and inserted, is now and shall continue in full force and effect and that the said contract and all provisions thereof are and shall continue to be binding upon their respective principals represented by them in this proceeding, and they hereby on behalf of their said principals respectively accept, ratify and confirm the said private contract and each and every clause and provision thereof; and in compliance with the agreement therein contained to embody said private contract in a public in-

strument they now do so by these presents and desire that embodying of the same herein shall have the same legal effect and the same force as if the same had been executed in a public instrument in the first instance.

Such is the public instrument executed by the appearing parties, which they execute, accept and sign before the undersigned notary public and in presence of the witnesses Francis E. Neagle and Enrique Castro, who are residents of this city and competent to be such, and who are personally known to me, and I, the notary, hereby certify to all of the statements herein set forth.

Manuel V. Domenech, Jul Umbach, Frank Antonsanti.

Francis E. Neagle, Enrique Castro Gonzalez.

I hereby certify that the foregoing is a true and correct copy of the above contract executed by the parties therein on the date therein expressed, the original thereof remaining in my protocol and bears number twenty.

In witness whereof, and for the purpose of delivery to the Fortuna Estates, I issue this copy on the same day, month and year of its execution. Interlineation—to—quantities—or to be adopted, are noted.

Frank Antonsanti.

[Internal Revenue stamp.]

SCHEDULE D

Cuadro Que Se Cita Cuadro Definitivo de Distribucion de Aguas del Rio Jacaguas de la Isla de Puerto Rico

Nombres de las haciendas Fuente del pueblo de Juana Diez	Fechas de las concesiones de riegos	Superficies totales de las haciendas		Terrenos con derecho a riego hectareas	Coeficiente de litros adoptado por hectareas y segundos		Cantidades de agua correspondientes litro por segundo	Numero de orden para la suspension de los riegos
		Cuerdas	Hectareas					
				"	"		4.00	13
Luciana	23 de Diciembre de 1848	619.73	243.58	117.91	0.70		82.54	4
Cristina	17 de Marzo de 1852	784.00	308.14	152.49	0.70		106.74	4
Fortuna	8 de Mayo de 1841.							
		794.00	312.07	199.64	0.70		139.75	12
	5 de Octubre de 1846.							
	23 de Abril de 1846.							
Potala		1785.00	701.57	224.42	0.70		157.09	8
	21 de Junio de 1859.							
Amelia	30 de Octubre de 1846	1378.77	541.91	294.00	0.70		205.80	2
	3 de Marzo de 1846	.....	.....	171.68	0.70		120.17	9
Ursula		1773.00	696.88	.....	.....		.....	..
	28 de Julio de 1855	.....	.....	79.21	0.50		39.60	7
	2 de Octubre de 1846	382.00	150.14	.....	.....		.....	..
Union		.....	.....	204.93	0.50		102.47	10
Serrano	26 de Septiembre de 1845	557.60	219.15	100.67	0.70		70.47	..
							97.04	11
							133.26	..
	14 de Mayo de 1845	878.84	345.41	125.58	0.50	62.79	36.22	..
Boca Chica	7 de Noviembre de 1860	.....	.....	75.54	0.70	52.88	.....	1
	7 de Marzo de 1867.							
San Fernando		"	75.54	.....	.....	.....	.....	..
	20 de Abril de 1870	.....	.....	31.44	0.70	22.03	.....	2
Placeres	1865 por prescripcion	612.00	240.54	.....	.....	.....	.....	..
						1166.30		

Madrid 8 de Junio de 1880.

Aprobado por S. M. Sanchez Bustillo
General Francisco Fontanals y Martinez.
J. U.

Es copia. El Secretario del Gobierno.

[fol. 49] EXHIBIT B TO ANSWER

"Union" and "Placeres" Contract

Memorandum of Agreement made this twenty-sixth day of August, 1914, between Ernest S. Wheeler, Assistant Commissioner of the Interior, discharging since January 17, 1914, the duties and functions of Commissioner of the Interior of Porto Rico, now in discharge of such duties and functions and in possession of said office and acting as such Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, party of the first part, and Jose A. Poventud, Isabel Cortada Vda. de Proventud, Juan Torruella y Cortada y Sergio Torruella, party of the second part.

Whereas, Jose A. Poventud, Isabel Cortada Vda. do Poventud, Juan Torruella y Cortada and Sergio Torruella, are the owners in fee simple of two (2) tracts of land situated in the Municipality of Ponce, in the District of Ponce, in the Island of Porto Rico, and claims as appurtenant thereto, by virtue of certain concessions, royal decrees of Kingdom of Spain and user, the right to use thereon waters from the River Jacaguas for the irrigation thereof, the said land and water rights being generally described as follows:

1. One tract known as the Estate "Union", comprising as shown on the table "Cuadro Definitivo de Distribucion de Aguas del rio Jacaguas", of June 8th, 1880—approximately 150.14 hectares of land, with an appurtenant right to take from the river Jacaguas for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for said Estate "Union".

2. One tract known as the Estate "Placeres", comprising—as shown on the table "Cuardo Definitivo de Distribucion de Aguas del rio Jacaguas", of June 8, 1880—approximately 240.54 hectares of land, with an appurtenant right to take from the river Jacaguas, for the irrigation thereof, 22 liters of water per second, equivalent to 565.75 feet of water per year for said Estate "Placeres".

[fol. 50] And Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella and its predecessors in title have been for upwards of twenty years and are now taking waters from the

river Jacaguas for irrigation of said tract of land, and claims to have been doing so under and by virtue of the said concessions and the said royal decrees of the Kingdom of Spain, granting, approving and confirming the water rights aforesaid (a partial list of said concessions and decrees being hereto annexed and marked "Schedule A"), such waters having been taken from the bed of said river Jacaguas through intakes built and established for the purpose by the predecessors in title of Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella; and

Whereas, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, also claim the right to take for the irrigation of the said two (2) tracts of land hereinabove mentioned torrential waters from the bed of the Jacaguas river during the time of high water without limit as to quantity except as limited by the size and location of the intakes and the canals leading therefrom to the respective tracts of land aforesaid (a list of the concessions therefore, being hereto annexed and marked "Schedule B"), and that said rights for the taking and use of such torrential waters have been exercised by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, and their predecessors in title for upwards of twenty years, and are now so exercised; and

Whereas, The People of Porto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of said irrigation system, erected a dam (known as the Guayabal dam) across the bed of the said Jacaguas river above the said intakes which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella use for taking water for irrigating its said two tracts of land in accord-[fol. 51] ance with its said claim of right; and The People of Porto Rico proposes to use the said dam for the impounding and storage of a part of the waters of the river Jacaguas and of the river Toro Negro, a stream rising on the north side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which

the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella and Cortada, and Sergio Torruella claim to be entitled to by reason of the aforesaid concessions, royal decrees and user for the irrigation of the two tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico and said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water rights and concessions; and

Whereas, the amount of water taken by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella and its predecessors in title for the irrigation of said two tracts of land under its said claim of water rights varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas river, so that it is impossible to determine in advance the exact amount of water to which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Jose Torruella y Cortada, and Sergio Torruella are entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal Dam) is ready to deliver from the said Jacaguas river to the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella the amount of water to which the latter may be entitled under its said concessions but in order to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part, desired to determine and agree upon an amount of water which, delivered regularly, may, under [fol. 52] all attending circumstances, be considered to be the fair equivalent in value for irrigation purposes of the amount of water which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella would under ordinary circumstances take and use under the said water rights and concessions; and

Whereas, the Commissioner of the Interior is authorized and empowered, by Section 13 of the amendment to the Public Irrigation Law, approved August 8, 1913, after consulting with the Attorney General of Porto Rico as to the

validity and legal status of the said water rights or concessions to enter, on behalf of The People of Porto Rico, into agreement with the owner of the said water rights or concessions, upon an amount of water equivalent to the water taken and used under said water rights and concessions and as to the time, place and conditions of delivery thereof to the lands to which the said water rights or concessions are appurtenant; and

Whereas, the Attorney General of Porto Rico has been duly consulted, as provided by said Act;

Now, therefore, in consideration of the premises and of the covenants and agreements on the part of each party hereinafter contained, the said Acting Commissioner of the Interior in representation and on behalf of The People of Porto Rico, party of the first part and the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada, and Sergio Torruella, do hereby covenant and agree as follows:

First. The parties hereto hereby agree that the quantities of water specified in this paragraph, delivered uniformly throughout the year, subject to the terms and conditions specified in this agreement, together with the additional water the right to take which is provided for or reserved in paragraphs third and fourth hereof, are the fair equivalent in value of the water which the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella takes under and pursuant to the concessions and water rights claimed by it, [fol. 53] and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery, hereinafter provided for, make delivery to the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, for the irrigation of the said tract of land hereinabove referred to, of the said amount of water, to wit:

For the Estate Union, 760.17 acre-feet per year;

For the Estate Placeres, 186.38 acre-feet per year.

The waters so to be delivered shall be delivered subject to the conditions hereinbelow expressed, in substantially equal quantities from day to day, to wit:

For the Estate Union, 2.08 acre-feet daily;

For the Estate Placeres, 0.51 acre-feet daily.

Second. Except in the case of shortage in the reservoir behind the Guayabal Dam herein provided for, the water deliverable hereunder for the Estates Union and Placeres shall be delivered at the present intakes of the respective estates, or may at the option of the Irrigation Service be delivered at any part of the canal of the respective estates equally advantageous to the owners of the said estates.

(The water for Union to be taken by pump.)

Third. Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella and Cortada, and Sergio Torruella are hereby granted the right, while this agreement remains in force, to take in addition to all amounts of water above specified, from the Jacaguas river, by pump, at the Union pumping station, water which may be available there for irrigation of any of the lands to the extent that such takings shall not deprive any owner or user of subsisting water rights or concessions upon the Jacaguas river of the water to which such owners or users may be entitled, either by virtue of such water rights or concessions or by virtue of any agreement or agreements in regard thereto entered into or to be entered into by them with The People of Porto Rico, provided, however that should The People of Porto [fol. 54] Rico at any time undertake the development and utilization of the surplus waters in this part of the Jacaguas River, this right shall be understood to be limited to a maximum usage of 1.40 second feet.

Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, shall install within sixty days after notice from the Irrigation Service and maintain at the Union Pumping Station, an appropriate measuring device for the measurement of the water taken from the river at such station, which shall, at all times, be subject to inspection by the properly accredited employees of the Irrigation Service.

Fourth. In addition to the amounts of water hereinbefore set forth, the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella hereby reserve and shall have the right to take torrential waters from the Jacaguas river through its head-gates at present existing for the use of torrential waters. Such headgates, whenever they do not conform to the terms of the

concessions, shall be reconstructed in conformity therewith, and such use of torrential waters shall be subject to such priorities in the use of torrential waters as may exist on the said Jacaguas river. The foregoing provisions, however, shall not in any way limit The People of Porto Rico from restraining all of the torrential flood waters which it may desire, and which it may be legally entitled to restrain in the reservoir above the Guayabal Dam.

To the extent that there may be waters derived through underground filtration or seepage from the River Jacaguas or its tributaries or from the reservoir maintained behind the said Guayabal Dam, which rise to or near the surface of the ground within the boundary lines of any so-called "semiroyal" portions of any of the tracts of land owned, leased, operated or cultivated by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors or assigns, or any waters derived in wells made or to be made upon any portions of said lands, or any of them, which are not strictly [fol. 55] subterranean waters, within the meaning of that term as used in the laws of Porto Rico and the full property of the owner or possessor of said lands, the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors, lessees or assigns, while this agreement remains in force, may make use of the said waters and all portions hereof in such manner and for such purposes as it or they shall from time to time elect, without payment or responsibility to The People of Porto Rico for or in respect thereto, except in so far as such right and the means adopted or to be adopted for its exercise may be limited, modified or restricted by the provisions of the Law of Waters.

Fifth. During ten days in each year, while this agreement is in force, The People of Porto Rico shall deliver to said Jose A. Poventud, I. Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, and the latter may take and use at its present intakes in the Jacaguas river, as indicated upon the annexed chart furnished by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella (marked "Schedule S"), built and used for said respective tracts of land,

in lieu of all quantities of water elsewhere specified in this agreement except in Section Fourth, the amount of water which said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella claims to be entitled to take for each of said two tracts of land under the said concessions and water rights, to wit:

For the Estate Union, 39.60 liters of water per second (to be taken by pump).

For the Estate Placeres, 22 liters of water per second.

The presence of water in the river bed of the Jacaguas river, at the openings of the said intakes, in quantities sufficient to permit the taking by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella of the quantities of water specified in this [fol. 56] paragraph, shall be deemed a delivery in accordance with this paragraph on behalf of The People of Porto Rico.

Twenty-four hours' notice shall be given by or on behalf of the Irrigation Service, to the manager of or other person in authority upon the Union and Placeres Estates, of the proposed delivery of water to the Union and Placeres Estates in accordance with the terms of this section instead of in accordance with the other terms of this agreement.

Sixth. Whenever and as long as there is no storage water in the reservoir behind said Guayabal dam, The People of Porto Rico shall deliver subject to the terms of this agreement, to Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, the quantities of water herein provided for from the flow of the Jacaguas river exclusive of water added thereto from the Toro Negro river; but such delivery shall be subject to be cut off or diminished when so long as and to the extent that such flow is insufficient to supply all water deliverable to the owners or users of subsisting valid water rights or concessions having priorities for the use of the waters of the Jacaguas river, whether by virtue of such rights or concessions, by virtue of valuations made in accordance with the Public Irrigation Law, or by virtue of agreements with regard thereto entered into between such owners or users and the Commissioner of the Interior or any other person or body authorized by law to enter into such agreement, in representation of The People of Porto Rico, in accordance

with the "Order of Suspension" established in the Definitive Table of Distribution of the Water of the river Jacaguas, approved by royal decree of June 8, 1880, a copy of which is hereto annexed marked "Schedule D."

The People of Porto Rico shall have the right to divert from the reservoir behind the Guayabal dam into the Juana Diaz Canal, or any other canals of the Irrigation System, the amount of water flowing into the reservoir from the Toro Negro river or from any other source than the Jacaguas River, whether or not there is any storage of water in the Guayabal reservoir; and it is further under- [fol. 57] stood and agreed by and between the parties that, as far as Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella and Sergio Torruella are concerned, The People of Porto Rico may divert all the waters of the Jacaguas river, to which Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella are not entitled as specified in this agreement, into the Juana Diaz Canal or any other canal, ditches or reservoirs of the Irrigation System.

It is understood and agreed that the expression "storage water" does not include water in the said reservoir not rising to a height more than three feet above the bottom of the outlet gates to the Juana Diaz Canal.

Seventh. In the event that, for any cause, whether within or beyond the control of The People of Porto Rico (except in the case hereinbefore provided for) the delivery of water to Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, at any point shall be temporarily partly or wholly interrupted, The People of Porto Rico shall, during the continuance of such cause, deliver an equivalent amount of water to the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella at some other proper and useful point in the irrigation canals of Union and Placeres Estates, to be selected by the Irrigation Service.

Eighth. The People of Porto Rico consents that, to the extent that the owners or users of valid and subsisting water rights may not be prejudiced, Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella may apply the water deliverable here-

under or any part of it to the irrigation of any of the lands hereinbefore described, or any part or portions thereof.

Ninth. It is further specifically understood and agreed by and between the parties hereto that any temporary or other arrangement made between the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y [fol. 58] Cortada and Sergio Torruella, their successors, lessees, or assigns, or representative thereof and any official of the Government of Porto Rico with respect to the taking and use of waters from the river Jacaguas, the measurement of such waters, the building of reservoirs, canals, siphons and pipe lines, the diversion of waters from one tract of land to another, the time during which waters shall be delivered from time to time, the amount of water to be delivered at any point or points at any time or times, the purchase of surplus water from time to time, or any other matters connected with the use of the said waters of the Jacaguas river, and the irrigation therewith of the lands owned, leased and cultivated by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors or assigns, shall at all times and for all purposes be deemed to be subject to the terms and provisions of this agreement, and shall not affect or modify the same or be deemed or considered so to do or to affect or prejudice the rights of either party hereunder.

Tenth. It is agreed by both parties that the delivery to and the use by the Jose A. Poventud, Isabel Cortada Vda. Poventud, Juan Torruella y Cortada and Sergio Torruella of water in accordance with the terms and conditions expressed in this agreement shall not in any event affect or modify the present existing status of the water rights and concessions claimed by the said Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruello; but that such delivery and use is to be made in view of the modified physical conditions resulting in the bed of the river Jacaguas from the establishment of the public irrigation system, which on the one hand will henceforth permit the delivery to and the use by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella of a substantially uniform — of water as provided in this agreement, and on

the other modifies to some extent the use of the water heretofore made by Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella that such delivery and use shall continue as long as such [fol. 59] modified conditions continue to exist, and in the event of the total or partial destruction of the Guayabal Dam, or of the main canal known as the Juana Diaz Canal, connected therewith, from any cause whatsoever, and the resulting inability of The People of Porto Rico to comply with the terms of this agreement, the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella may forthwith exercise and enjoy such rights as it has under the said concessions and grants, but as soon as The People of Porto Rico shall have reestablished or reconstructed the works so destroyed in substantially the same form as at present constructed, or in such a manner as to enable it to perform substantially the terms of this agreement, this agreement shall be revived and be in full force and effect from such time.

Eleventh. Neither the execution of this agreement by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella nor the acceptance and use of water delivered to it as herein provided, nor any consent, waiver or permission given or held to be given hereby or hereunder nor any failure on the part of Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, acting in accordance with this agreement, to take and use water in accordance with the exact terms of its said concessions and water rights, or any of them, nor anything done or suffered by said Jose A. Boventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella hereunder or in accordance with the terms hereof or pursuant to the provisions herein contained shall at any time or for any purpose be deemed to affect, modify or change to any extent the status of the said water rights and concessions claimed by the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella as existing at the time this agreement was entered into or to limit or prejudice any rights or privileges which the Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella y Cortada and Sergio Torruella, its successors or assigns,

[fol. 60] may have under or by virtue of the said concessions, and the grants and decrees respecting the same hereinabove described, or by virtue of the use of the said waters of said Jacaguas river heretofore made by it and its predecessors in title.

Twelfth. Nothing in this agreement contained shall be taken to impair or abridge such rights as The People of Porto Rico may have to modify, enlarge or improve any of the works or structures thereto.

Thirteenth. This agreement shall apply to, benefit and bind the successors, lessees and assigns of the parties hereto to the same extent that it applies to, benefits and binds such parties.

Fourteenth. The party of the first part hereby agrees that upon the request of the party of the second part, the party of the first part or the officer or official who may at the time be discharging the functions of the Commissioner of the Interior of Porto Rico, in representation and on behalf of The People of Porto Rico, will execute a public document embodying agreement in conjunction with the party of the second part, and the party of the second part hereby agrees that it will, upon the request of any Commissioner of the Interior of Porto Rico duly appointed and acting as such, or in case the Office of the Commissioner of the Interior shall be abolished by Act of Congress, then and in such event upon the request of the officer or official duly appointed under an Act of Congress to perform the duties and functions now performed by the Commissioner of the Interior, a public document embodying this agreement, and each party hereby agrees that it will cooperate with the other in taking all steps necessary to have this agreement or the public document embodying the same duly recorded in the proper Registry of Property and will execute or cause to be executed such documents and papers as may be necessary or proper to this end; and it is further specifically agreed that failure on the part of either party to comply with the provisions of this clause fourteenth shall constitute a total breach of this agreement and that the other party hereto, unless such breach be waived by it, shall thereupon be entitled to the exercise of [fol. 61] any or all of the rights it had at the time this

agreement was entered into as if this agreement had never been entered into—or performed in whole or in part by either party hereto.

In witness whereof The People of Porto Rico have caused these presents to be signed by the Acting Commissioner of the Interior, acting in representation and on behalf of The People of Porto Rico; and the parties of the second part do for themselves sign these presents, with the consent and approval of "Fortuna Estates", through its attorney in fact Julius Umbach and as sublessee of "Union and Placeres", all on the day and year first hereinabove written.

E. S. Wheeler, Acting Commissioner of the Interior. Jose A. Poventud, Isabel Cortada Vda. de Poventud, Juan Torruella Cortada, Sergio Torruella, Parties of the Second Part. Jul. Umbach, Attorney-in-fact of Fortuna Estates.

Witnesses: M. Lozano, Wm. L. Aguayo.

IN UNITED STATES DISTRICT COURT

DEMURRER TO SPECIAL DEFENSES—Filed January 10, 1931

Now comes the plaintiff and demurs to the first, second, third, fourth, fifth, sixth, seventh, eighth and ninth separate and distinct defenses set up in paragraphs 10 to 41 inclusive of the answer to amended complaint herein, for the reason that none of said additional defenses set forth are sufficient to constitute a defense to this action.

Wherefore plaintiff prays that said nine separate and distinct defenses be stricken from the answer.

[fol. 62] San Juan, Porto Rico, January 2, 1931.

James R. Beverley, Attorney General; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff.

Copy received this third day of January, 1930.

William J. Gilleran, Attorney for Defendants.

In United States District Court

Memorandum in Support of Demurrer to Special Defenses—Filed February 9, 1931

In this suit The People of Porto Rico are claiming taxes against the defendants on certain lands in the southern part of the island. The taxes in dispute were imposed by Act No. 29, approved July 8, 1921. Defendants answered the suit, and set up, in addition, ten separate defenses which are in general of two kinds: (1) defenses based on a certain contract made between the Commissioner of the Interior of Porto Rico and the owners of the land upon which the taxes are laid. This contract was made August 26, 1914, and relates to certain arrangements made at that time between the Government and the holders of old Spanish water concessions, by which the Spanish concessions were exchanged for the right to receive water from the Government irrigation system. The second group of defenses are legal, based upon the alleged invalidity of the Act of 1921, for want of uniformity, delegation of legislative power, etc.

Plaintiff demurred to these special defenses. The position of The People of Porto Rico in this suit, so far as these defenses are concerned, is that the contract of 1914 has nothing to do with the validity or invalidity of the taxing act, and under no circumstances could have any legal connection with this act. Not one word is said in the contract about tax exemption, and even had the contract expressly agreed to exempt these lands from taxes, that part of the contract would have been null and void, since the [fol. 63] Commissioner of the Interior nor any other administrative officer can barter away the taxing power of the Government. It seems to us absolutely plain that the contract of 1914 has nothing to do with this suit. The taxing act of 1921, like any other law, must stand or fall by its own intrinsic validity or invalidity. The attaching of this contract to the answer and the injection of questions relating to it into the case, merely has a tendency to obscure the real issues and to confuse and lengthen the record. The 1921 taking act is separate and independent from the contract, and in no way impairs any valid obligation of that contract.

The other defenses are that the act levies a special assessment without the corresponding benefit; that it confiscates property rights; that it takes private property for public use wihout just compensation; that it destroys property rights; that it violates the equal protection of laws; that it delegates to administrative officers legislative powers; and that it does not provide for judicial review of the acts of the tax officers. So far as this last is concerned, attention is called to the fact that this tax, like all other taxes, may be paid under protest and suit brought to recover under Act No. 8, approved April 19, 1927. On all the other defenses, except the question of uniformity, we believe a mere reading of the act (page 366, Laws of 1921) will show that this act is like most all other taxing acts, and that these defenses are without merit.

The defendant claims that the act in question violates the uniformity clause of the Organic Act. The whole question here is as to the reasonableness of the classification, since the uniformity requirement is only that taxes be uniform within the class, and that the classification must be reasonable. The Government contends that the classification in this act, that is, the selection of lands within the irrigable area which do not contribute to the maintenance of the irrigation system, is not an unreasonable classification. The uniformity required is within the class. Atwood v. John-[fol. 64] son, 175 N. W. 589; Ludlon v. Wolbrinck, 205 S. W. 196; Robertson v. Pratt, 13 Hawaii, 590; Stebbins v. Reily, 268 U. S. 137, 69 L. Ed. 456.

In the latter case the Supreme Court of the United States said:

"It is not necessary that the basis of classification should be deducible from the nature of the thing classified. It is enough that the classification is reasonably founded in the 'purposes and policies of taxation'. Watson v. Comptroller, 254 U. S. 122; Stebbins v. Riley, 69 L. Ed. 456.

See also Maxwell v. Bugby, 250 U. S. 525-539; American Sugar Refining Co. v. Louisiana, 179 U. S. 89.

In the fourth edition of Cooley on Taxation, volume 1, page 547, we find this statement as to a constituional provision requiring taxes to be uniform:

"A tax is uniform within such provisions when it is equal upon all persons belonging to the described class upon which it is imposed."

In the case of Guano Co. v. Virginia, 253 U. S. 412, the court said:

"The latitude of discretion is notably wide in the classification of property for purposes of taxation. * * *"

In Cooley, at page 594 of volume 1, this author says:

"Classification for exemption purposes may be based on the use to which property is devoted, as well as the nature of the property; but property cannot be exempted merely because of its ownership where the same kind of property owned by others is taxed, nor according to its location. Instead of classifying property for the purpose of exemption either by its characteristics or by its uses, the legislature cannot classify the owners of property according to some characteristic possessed by them, or connected with their conduct, and thereupon base an exemption of the property of such persons, regardless of the characteristics possessed by it and of the uses to which it is put.

"Where classification for exemption is allowable, it is [fol. 65] proper to place in a separate class, particular kinds of corporations, such as railroad companies, insurance companies, building and loan associations, etc. So it is competent to make two classes of manufacturing corporations, one of which is taxed, while the other is not. And exempting from a tax, imposed on telegraph and telephone companies, those companies having gross receipts of less than $500, has been held not an unreasonable classification.

"Taxation of memberships in a chamber of commerce does not deny equal protection of the laws because memberships in the Associated Press, lodges, fraternal orders, churches, etc., are not taxed.

"A tax exemption statute which rests upon a rational classification is not invalid merely because affecting a few or even only one in its practical operation."

For these reasons we submit that the demurrer to the special defenses in the answer should be upheld and the record cleared for trial upon the facts.

San Juan, P. R., February 9, 1931.

Respectfully submitted.

James R. Beverley, Attorney General; M. Rodriguez Serra, Assistant Attorney General.

Notified with copy this ninth day of February, 1931.

William J. Gilleran, by R. Patten, Attorney for Russell & Co.

In United States District Court

Opinion on Demurrer to Special and Separate Defenses—Filed April 2, 1931

This is a suit by The People of Porto Rico to recover from the defendants herein certain alleged taxes claimed to [fol. 66] be due and owing by the defendants under Act No. 49 of 1921 upon certain lands described in paragraph 3 of the amended complaint.

In the answer to the amended complaint the defendants have set up nine separate and distinct defenses and a partial defense.

To the said nine separate and distinct defenses the plaintiff has filed a demurrer.

The said demurrer and each and every part thereof is overruled as in my opinion the matters and things set up therein constitute just and valid defenses against the cause of action set up in plaintiff's amended bill of complaint.

Dated at San Juan, Porto Rico, this second day of April, 1931.

Ira K. Wells, United States District Judge.

In United States District Court

Agreed Statement of Facts—Filed November 24, 1931

Come now the parties hereto by their undersigned attorneys and, for the purpose of the trial of this action by

this court and any and all appeals taken herein stipulate and agree upon the following statement of facts:

1. That the plaintiff is a sovereign political entity created by Act of Congress of the United States of America approved on March 2, 1917, and generally referred to as the Organic Act of Porto Rico and as the Jones Act; that Manuel V. Domenech is now and was at the time of the institution of this suit the duly appointed and qualified Treasurer of Porto Rico.

2. That the defendants, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, now constitute and at the time of the institution of this suit constituted the civil agricultural limited partnership of Russell & Co., Sucesores S. en C. (formerly Russell & Co., S. en C.), organized under the laws of Porto Rico; that at all such times said Frank A. Dillingham was and is a citizen and resident of the State of New Jersey; said Horace Havemeyer, a citizen and resident of the State of New York; Edward S. Paine, a citizen [fol. 67] and resident of the State of New York; Edwin L. Arnold, a citizen and resident of the State of Florida; Frank M. Welty, a citizen and resident of the State of Ohio, and H. B. Orde, a citizen of Great Britain and a resident of the Dominion of Canada.

3. That the amount in controversy in this suit exceeds the sum of three thousand dollars ($3,000) excluding interest and costs.

4. That said defendants are and have been at all times subsequent to the year 1921 the owners in fee simple of the four tracts known as haciendas Fortuna, Cristina, Luciana and Serrano, described in paragraph 3 of the amended complaint as farms Nos. 403, 295, 379 and 309 respectively, and in actual possession thereof.

5. That Fortuna Estates, the defendants' predecessor in title, on the twenty-sixth day of August, 1914, was and the defendants now are, by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, the owners of certain water rights in favor of said lands, for using thereon for the irrigation thereof, waters from the Jacaguas river, a non-navigable river flowing into the

Caribbean Sea, the said water rights appurtenant thereto being generally described as follows:

1. For the tract known as the Hacienda Fortuna, comprising approximately 312.07 hectares of land, the right to take from the river Jacaguas, for the irrigation thereof, 139.75 liters of water per second, equivalent to 3,572.910 acre feet of water per year for said Hacienda Fortuna.

2. For the tract known as the Hacienda Cristina, comprising approximately 308.14 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 106.74 liters of water per second equivalent to 2,728.969 acre feet of water per year for said Hacienda Cristina.

3. For the tract known as the Hacienda Luciana, comprising approximately 243.58 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 82.54 liters of water per second, equivalent to 2,111.142 acre feet of water per year for said Hacienda Luciana.

[fol. 68] 4. For the tract known as the Hacienda Serrano comprising approximately 219.15 hectares of land, the right to take from the river Jacaguas, for irrigation thereof, 102.47 liters of water per second, equivalent to 2,619.769 acre feet of water per year for said Hacienda Serrano.

6. That the said Fortuna Estates and its predecessors in title had been for upwards of twenty years prior to August 26, 1914, taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription, to the aggregate amount of 11,032.79 acre feet per year, apart from torrential waters, taking the same from the bed of said river through intakes built and established for the purpose by the defendants' predecessors in title.

7. That said Fortuna Estates, the defendants' predecessor in title, on August 26, 1914, was, and defendants now are, the owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, of the right to take and use, for the irrigation of one or more of the estates above mentioned, torrential waters from said Jacaguas river; and said Fortuna Estates and its predecessors in title for upwards of twenty years prior to the

26th of August, 1914, had been taking and using for the irrigation of said estates torrential waters from the bed of Jacaguas river during the time of high water, without limit as to quantity, except as limited by the size and location of the torrential intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription.

8. That The People of Porto Rico authorized and undertook the construction of a public irrigation system in accordance with the Public Irrigation Law approved September 18, 1908, as amended, and have in the construction of the said irrigation system erected a dam for the impounding and storage of a part of the waters of the Jacaguas river which is known as the "Guayabal Dam" and extends across the bed of the said Jacaguas river above said intakes which [fol. 69] the defendants' predecessors in title used for taking and using water for irrigating their said haciendas or estates and the estates Union and Placeres hereinafter mentioned.

9. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the Interior, pursuant to the provisions of said Public Irrigation Law, requested the defendants' predecessors in title to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said concessions, royal decrees, user and prescription, in favor of the four parcels of land mentioned above in paragraph (4) and known as Haciendas Fortuna, Cristina, Luciana and Serrano, but that said request was refused.

10. That Fortuna Estates, defendants' immediate predecessor in title, on the twenty-sixth day of August, 1914, entered into a contract with Ernest S. Wheeler, then Assistant Commissioner of the Interior, and discharging the duties and functions of Commissioner of the Interior of Porto Rico, in representation of and on behalf of The People of Porto Rico, which said contract on the eighth day of June, 1915, was protocolized and put in the form of a notarial instrument duly executed by said Fortuna Estates and by Manuel V. Domenech, then Commissioner of the In-

terior of Porto Rico, a copy of which contract is annexed to and made a part of the answer herein, marked "Exhibit A", and is incorporated herein by reference.

11. That in the year 1917 Fortuna Estates duly sold, assigned and transferred to the defendants its title to the four parcels of land described above in paragraph (4) and all its rights, benefits and privileges under the concessions referred to hereinabove in paragraphs 4, 5, 6 and 7 and otherwise, and all its rights, title and interest in and to said contract described in the preceding paragraph and all waters to which it might be entitled thereunder.

12. That Jose A. Poventud and Sergio Torruella Cor- [fol. 70] tada and the Sucesion de J. Serralles are and they and their predecessors in title at all times subsequent to the year 1921 have been the owners in fee simple of two tracts of land situated in the municipality of Juana Diaz, Island of Porto Rico, known as Haciendas Union and Placeres and described in paragraph 3 of the amended complaint as farm No. 413 and through their sub-lessees, the defendants herein, are and at all such times have been in actual possession thereof.

13. That Jose A. Poventud, Sergio Torruella Cortada and the predecessors in title of the Sucesion de J. Serralles, were on August 26, 1914, and said Jose A. Poventud, Sergio Torruella Cortada and the Sucesion de J. Serralles now are, by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription, the owners of certain water rights in favor of said lands, for using thereon for the irrigation thereof, waters from the said Jacaguas river, a non-navigable river flowing into the Caribbean Sea, the said lands and said water rights appurtenant thereto being generally described as follows:

1. One tract known as the Hacienda Union, comprising approximately 150.14 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof, 39.60 liters of water per second, equivalent to 1,013.56 acre feet of water per year for the said Hacienda Union.

2. One tract known as the Hacienda Placeres, comprising approximately 240.54 hectares of land, with the right to take from the river Jacaguas, for the irrigation thereof,

22.00 liters of water per second, equivalent to 565.75 acre feet of water per year for the said Hacienda Placeres.

14. That prior to the year 1914 the then owners of said two tracts of land executed a lease for a term of years in favor of defendants' predecessors in title and incidentally therto assigned to defendants' predecessors in title all their rights whether by concessions, royal decrees, user and prescription or contract, for the taking of water for said lands; [fol. 71] that under the terms of said lease the lessee is obligated to pay any taxes assessed against the said lands.

15. That the said owners of said two parcels of land and their predecessors in title and defendants' predecessors in title, as lessees, had been for upwards of twenty years prior to August 26, 1914, taking and using, whenever physically possible, water from the Jacaguas river for the irrigation of said estates under and by virtue of said concessions, royal decrees, user and prescription.

16. That said Jose A. Poventud and Sergio Torruella Cortada and the predecessors in title of the Sucesion J. Serralles on the twenty-sixth day of August, 1914, were, and said Jose A. Poventud, Sergio Torruella Cortada and the Sucesion de J. Serralles now are, the owners by virtue of certain concessions, royal decrees of the Kingdom of Spain, user and prescription of the right to take and use torrential waters from the Jacaguas river for the irrigation of said haciendas described above in paragraph (13) and known as Union and Placeres; and that said Jose A. Poventud and Sergio Torruella Cortada and the predecessors in title of the Sucesion J. Serralles through defendants and their predecessors in title as lessees for upwards of twenty years prior to the twenty-sixth day of August, 1914, had been taking and using for the irrigation of said estates torrential waters from the bed of the Jacaguas river during the time of high water, without limit as to quantity except as limited by the size and location of the torrential intakes and the canals leading therefrom to the respective estates above mentioned, under and by virtue of said concessions, royal decrees, user and prescription.

17. That prior to August 26, 1914, The People of Porto Rico, acting through its then Commissioner of the In-

terior pursuant to the provisions of the said Public Irrigation Law, requested the predecessors in title of said Jose A. Poventud, Sergio Torruella and Sucesion J. Serrales and defendants' predecessors in title and lessees to surrender and relinquish their rights to take and use water, both ordinary and torrential, from the Jacaguas river for irrigation purposes by virtue of their said con- [fol. 72] cessions, royal decrees, user and prescription in favor of the two parcels of land described above in paragraph 13 and known as Union and Placeres, but that said request was refused.

18. That said Jose A. Poventud, Isabel Cortada, Vda. de Poventud, Juan Torruella Cortada and Sergio Torruella Cortada, being the predecessors in title of the said present owners, and the lessee Fortuna Estates, being the predecessor in title of defendants as lessee, on or about the twenty-sixth day of August, 1914, entered into a contract with Ernest S. Wheeler, then Assistant Commissioner of the Interior and discharging the duties and functions of the Commissioner of the Interior of Porto Rico in representation of and on behalf of The People of Porto Rico, a copy of which contract is annexed to and made a part of the answer herein, marked "Exhibit B", and is incorporated herein by reference.

19. That thereafter in the year 1917 Fortuna Estates, being then the lessee of the said haciendas Union and Placeres with all water rights benefitting said property or the owners thereof and being lessees thereof for a term of years, duly sold, assigned and transferred to the defendants its leasehold title to said haciendas Union and Placeres mentioned above in paragraph 13 and all rights, benefits, privileges and obligations to which it and its assignors were or might be entitled under the concessions referred to hereinabove in paragraphs 13 and 15 and otherwise and in and to said contract described in the preceding paragraph and all waters to which it or its said lessors might be entitled thereunder.

20. That the officials of the Government of Porto Rico charged with the compliance of the said contracts of August 26, 1914, have complied with the same in their en-

tirety and the aforesaid properties designated hereinabove and in the amended complaint and answer as haciendas Fortuna Cristina, Luciana and Serrano, Union and Placeres have been supplied since the year 1915 and are now being supplied with water for the purpose of the irrigation of said lands from the Southern Coast [fol. 73] Public Irrigation System pursuant to and under the terms of the said contracts of August 26, 1914, hereinabove referred to in paragraphs 10 and 18 but neither the defendants herein nor the said lands so hereinabove described have received during such time or any other time nor are they now receiving nor have they been supplied nor are they being supplied with any water for the irrigation of said lands or for other purposes from the said Southern Coast Public Irrigation System except such waters as the said defendants and the said lands were and are entitled to receive under and by virtue of the contracts of August 26, 1914, hereinabove referred to.

21. That the above mentioned properties have not been and are not now subject to the payment of the irrigation tax imposed under the provisions of an Act of Legislature of Porto Rico, approved September 18, 1908, entitled "An Act to provide for the construction of an irrigation system and to provide revenues therefor; for the temporary appropriation of $200,000 to begin such work and for other purposes", as amended, but all the above mentioned properties are subject to all real property taxes levied by The People of Porto Rico for insular or municipal purposes, and all of such taxes levied from 1921 to date have been paid from year to year at the same rates paid by other properties, whether included in the Southern Coast Public Irrigation District provided by the Irrigation Law or not included therein, and whether the owners of the land have relinquished their concession for irrigation water or have not relinquished them.

22. That the first session of the Tenth Legislature of Porto Rico passed an act entitled "An Act fixing a tax on certain lands using waters from the Southern Coast Public Irrigation System on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes", which law was approved by the Governor of Porto Rico on July 8, 1921, and which took effect 90 days

after its approval. Said Act is known as Act No. 49 of 1921.

23. That pursuant to and in the manner provided in the [fol. 74] said Act No. 49 of 1921, the Treasurer of Porto Rico has levied and assessed against the said parcels of land hereinabove described as special taxes for the fiscal years from 1922-23 to 1929-30 inclusive various amounts aggregating the sum of $49,918.56 which have not been paid and to collect which this suit is brought, for which said sum of $49,918.56 the defendant partnership is liable to the plaintiff herein if said Act No. 49 of 1921 is valid and legal; that in addition to the said amount of taxes so levied assessed the Treasurer of Porto Rico has demanded from the defendants and this suit is also brought to collect the additional sum of $11,698.48, as interest alleged to be due on the said unpaid taxes; that the said amount of $11,698.48 is a correct computation of the interest which would be payable as of March 30, 1930, on such taxes in case such taxes are valid and legal and in case such interest charges are legally collectible on such taxes levied and assessed as aforesaid under the said Act No. 49 of 1921.

24. That heretofore and on or about the twelfth day of June, 1926, pursuant to a final decree of this court entered June 11, 1926, in equity case No. 1250, entitled "Horace Havemeyer et al., Complainant, v. Juan G. Gallardo, Defendant", the defendants herein obtained after trial on the merits in this court an injunction forever restraining the assessment or collection of any tax under or pursuant to the said Act No. 49 of 1921, approved on or about July 8, 1921, against the defendants or the lands hereinabove described; that an appeal was thereafter taken from said final decree to the Circuit Court of Appeals, First Circuit, which appeal was pending before said Circuit Court of Appeals on March 4, 1927, and abated solely by reason of the provisions of the Act entitled "An Act to amend and reenact sections 3, 20, 31, 33, 38 and 48 of the Act of March 2, 1917, entitled 'An Act to provide a civil government for Porto Rico, and for other purposes', as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as '5a' of said Act".

[fol. 75] 25. It is expressly agreed that the agreement herein contained with respect to the truth of the facts set forth in paragraphs 5 to 19 inclusive of this agreed statement of fact, shall not be considered or construed to be an admission on the part of the plaintiff herein that such facts are in any way material or relevant to the issues involved in this case.

San Juan, P. R., November 24, 1931.

James R. Beverley, Attorney General of Porto Rico, Attorney for Plaintiff. William J. Gilleran, Attorney for Defendants.

IN UNITED STATES DISTRICT COURT

OPINION—December 7, 1931

James R. Beverley, Esq., Attorney General of Porto Rico, Attorney for Plaintiff.

William J. Gilleran, Esq., Attorney for Defendants.

This is a suit brought by The People of Porto Rico to recover from the defendants certain alleged taxes claimed to be due and owing by the defendants under Act No. 49 of 1921, upon lands described in the amended complaint.

In the answer to the amended complaint the defendants have set up nine separate and distinct defenses and a partial defense.

A jury was waived by both parties in writing and the case submitted to the court upon an agreed statement of facts.

The agreed statement of facts is short and it is not necessary to re-state them in this opinion.

Upon the issues herein joined the court finds for the defendants and against the plaintiff.

That Act No. 49 of 1921 impairs the obligations assumed by the Government under the contracts of August 26, 1914, and that said contracts are binding upon The People of Porto Rico.

In so far as said Act No. 49 of 1921 applies to defendants the same constitutes the taking of private property without due process of law.

[fol. 76] That in so far as the defendants are concerned said Act No. 49 of 1921 violates the requirement of the Or-

ganic Act of Porto Rico that the rule of taxation in Porto Rico shall be uniform.

That said Act No. 49 of 1921 is in conflict with the Treaty of Paris.

That said Act No. 49 of 1921 violates the prohibition of the Organic Act against unequal protection under the law.

That said Act No. 49 of 1921 is void for the reason that it delegates to administrative officers the legislative function of levying taxes.

That said Act No. 49 of 1921 is void in that it does not provide for any hearing or appeal before the taxes become fixed.

Judgment will be entered in accordance with this opinion in favor of the defendants and against the plaintiff upon the issues herein joined and the defendants will recover their costs herein.

Dated at San Juan, Porto Rico, this seventh day of December, 1931.

Ira K. Wells, United States District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT—December 21, 1931

A stipulation having been duly filed herein waiving trial by jury, and this action having duly come on for trial before the Honorable Ira K. Wells, Judge of the District Court of the United States for Porto Rico, the issues having been submitted to the court on an agreed statement of facts, and the court having filed its opinion herein on the seventh day of December, 1931, finding the issues herein for the defendants and against the plaintiff and ordering the entry of judgment in favor of the defendants and for their costs herein, now, on motion of William J. Gilleran, attorney for defendants, it is

Ordered and adjudged that the complaint herein be dismissed upon the merits and that the plaintiff recover nothing [fol. 77] in this action and that the defendants recover of the plaintiff herein the costs of this action to be taxed by the clerk of this court.

Done and entered at San Juan, P. R., this twenty-first day of December, 1931.

Ira K. Wells, Judge of the District Court of the United States for the District of Porto Rico.

Copy received this seventeenth day of December, 1931, and no objection as to form.

James R. Beverley, Attorney General of Porto Rico.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed January 29, 1932

To the Honorable Ira K. Wells, Judge of the United States District Court for the District of Porto Rico:

Now comes The People of Porto Rico, represented by Manuel v. Domenech as Treasurer of Porto Rico, plaintiff in the above styled and numbered case, and feeling itself aggrieved by the final judgment of this court entered against it in this case on the twenty-first day of December, 1931, hereby prays that an appeal may be allowed to it to the United States Circuit Court of Appeals for the First Circuit from said judgment, and in connection with this petition for appeal petitioner presents its assignment of errors. Petitioner further prays that the amount of security may be fixed by the order of the court allowing the appeal and that a transcript of the record, proceedings and papers upon which said judgment was made and entered, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the First Circuit sitting at Boston, Massachusetts.

San Juan, Porto Rico, January 23, 1932.

James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

[fol. 78] Receipt of copies of the above petition for appeal and of the assignment of errors is hereby acknowledged this twenty-sixth day of January, 1932, and the service of citation on appeal in this case is hereby expressly waived.

William J. Gilleran, Attorney for Defendants-Appellees.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND FIXING BOND—Filed January 29, 1932

The petition for appeal in the above styled and numbered case, filed by The People of Porto Rico, plaintiff, represented by Manuel V. Domenech, Treasurer of Porto Rico, having been duly read and considered, and upon consideration of the assignment of errors and of the records of said cause, it is ordered that the said appeal be allowed from the District Court of the United States for Porto Rico to the United States Circuit Court of Appeals for the First Circuit as prayed for in said petition, and that said appeal be returned to the United States Circuit Court of Appeals for the First Circuit in accordance with law upon condition that the petitioner, plaintiff-appellant in this cause, gives security in the sum of three hundred (300) dollars to prosecute said appeal to effect, and in default of making its appeal good, to answer to defendants-appellees for such costs and damages as may be adjudged or decreed on account of said appeal.

In witness whereof I hereto set my hand this twenty-ninth day of January, 1932.

Ira K. Wells, Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed January 29, 1932

To the Honorable Ira K. Wells, Judge of the United States District Court for the District of Porto Rico:

Now comes plaintiff-appellant in this case, The People of Porto Rico by their attorneys, the Attorney General of Porto Rico and undersigned counsel, and in connection with [fol. 79] the petition for an appeal in this case to the United States Circuit Court of Appeals for the First Circuit, says:

That in the records, proceedings and final judgment in this case, error has been committed to the prejudice of plaintiff-appellant, to wit:

1. The court erred in failing to remand this case to the District Court for the Judicial District of San Juan, Porto Rico, as prayed for in plaintiff's amended motion to remand of August 14, 1930.

2. The court erred in overruling on April 2, 1931, plaintiff's demurrer to the special defenses in the amended answer of defendants.

3. The court erred in holding that Act No. 49 of the Legislature of Porto Rico, approved July 8, 1921, impairs the obligation of contracts between the Government of Porto Rico and the defendants.

4. The court erred in holding that said Act No. 49, approved July 8, 1921, is void in that it provides for the taking of private property without due process of law.

5. The court erred in holding that said Act No. 49, of July 8, 1921, violates the requirement of the Organic Act of Porto Rico that the rule of taxation in Porto Rico shall be uniform.

6. The court erred in holding that said Act No. 49, approved July 8, 1921, is void as being in conflict with the Treaty of Paris between the United States of America and the Kingdom of Spain.

7. The court erred in holding that said Act No. 49, of July 8, 1921, violates the equal protection clause of the Organic Act of Porto Rico.

8. The court erred in holding that said Act No. 49, approved July 8, 1921, delegates to administrative officers the legislative function of levying taxes.

9. The court erred in holding that said Act No. 49, approved July 8, 1921, is void in that it makes no provision for a hearing or appeal before the taxes become fixed.

[fol. 80] 10. The court erred in rendering judgment for the defendants and against the plaintiff and in dismissing the complaint.

11. That the judgment is contrary to law.

12. For other errors apparent from the record.

Wherefore plaintiff-appellant prays that the judgment aforesaid be reversed and that costs be adjudged against defendants.

San Juan, Porto Rico, January 23, 1932.

James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

Notified with copy this twenty-sixth day of January, 1932, and service of citation on appeal is hereby expressly waived.
William J. Gilleran, Attorney for Defendants-Appellees.

In United States District Court

Bill of Exceptions—Filed January 29, 1931

Be it remembered that on August 14, 1930, plaintiff filed an amended motion to remand this case to the District Court of San Juan and that on said date the court denied this motion, to which the plaintiff excepted; that on January 2, 1931, the plaintiff filed a demurrer to the special defenses in the answer and on April 2, 1931, the court overruled this demurrer, to which the plaintiff excepted; that this case came — to be heard on its merits on the twenty-fourth day of November, 1931, before the Honorable Ira K. Wells, Judge of the District Court of the United States for Porto Rico, whereupon the parties submitted to the court an agreed statement of facts upon which the court rendered judgment for the defendants and plaintiff excepted. Plaintiff-appellant now requests the court to approve this bill of exceptions for the purpose of its record on appeal.
[fols. 81 & 82] San Juan, Porto Rico, January 23, 1932.
James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

Notified with copy of the foregoing bill of exceptions and there is no objection to its approval by the court.
William J. Gilleran, Attorney for Defendants-Appellees.

The foregoing bill of exceptions is hereby approved this twenty-ninth day of January, 1932.
Ira K. Wells, Judge.

Bond on appeal for $300.00, approved and filed January 29, 1932, omitted in printing.

[fol. 83] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD—Filed January 29, 1932

To the Honorable Lulu G. Donohue, Clerk of the United States District Court for Porto Rico:

Please prepare transcript of the record in this case to be filed in the office of the clerk of the United States Circuit Court of Appeals for the First Circuit under the appeal taken herein and insert in said transcript the following pleadings, documents and proceedings, to wit:

1. Amended complaint.
2. Petition for removal to the United States District Court for the District of Porto Rico.
3. Order of removal.
4. Plaintiff's amended motion to remand to the District Court of San Juan.
5. Answer to amended complaint.
6. Plaintiff's demurrer to special defenses in the answer.
7. Brief in support of demurrer to special defenses.
8. Opinion of the court overruling plaintiff's demurrer to special defenses.
9. Agreed statement of facts.

[fol. 84] 10. Opinion of the court of December 7, 1931.

11. Judgment of December 21, 1931.
12. Petition for appeal.
13. Assignment of errors.
14. Bill of exceptions.
15. Order of the court allowing appeal and fixing bond.
16. Bond on appeal.
17. This præcipe.
18. Certificate of clerk.

San Juan, Porto Rico, January 25, 1932.

James R. Beverley, Attorney General of Porto Rico; A. Ortiz Toro, of Counsel, Attorneys for Plaintiff-Appellant.

Copy received this twenty-sixth day of January, 1932.

William J. Gilleran, by Ryder Patten, Attorneys for Defendants-Appellees.

Citation on Appeal

District Court of the United States, District of Porto Rico

The President of the United States of America to Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde, and Frank M. Welty, constituting the civil agricultural limited partnership of Russell & Co., Sucesores, S. en C., Greetings:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the First Circuit, in the city of Boston, Massachusetts, on the second day of April, next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Porto Rico, wherein The People of Porto [fols. 85 & 86] Rico and in its representation Manuel V. Domenech, in his character as Treasurer of Porto Rico, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ira K. Wells, Judge of the District Court of the United States for the District of Porto Rico, this third day of February, in the year of our Lord one thousand nine hundred and thirty-two.

Ira K. Wells, District Judge, District of Porto Rico.

San Juan, P. R., February 13, 1932.

Returned unexecuted as per instructions of Attorney General of Porto Rico.

H. S. Hubbard, United States Marshal, by H. A. Hubbard, Deputy.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 87] IN DISTRICT COURT OF THE JUDICIAL DISTRICT OF SAN JUAN, PORTO RICO

Civil. No. 12619

THE PEOPLE OF PORTO RICO and in its Representation, Manuel V. Domenech, in his Character as Treasurer of Porto Rico, Plaintiff,

v.

RUSSELL & Co., S. en C., Defendant

Collection of Taxes

COMPLAINT

Comes now the plaintiff, The People of Porto Rico, and in its representation Manuel V. Domenech, Treasurer of the Government of Porto Rico, through the undersigned attorneys, and as a cause of action against the defendant sets forth and alleges:

I. The plaintiff, The People of Porto Rico, is a political entity invested with governmental powers, with capacity to sue, constituted by the act of the United States Congress approved the 2d of May, 1917, commonly called "The Jones Law, or Organic Act of Porto Rico".

Manuel V. Domenech is the Treasurer of the Government of Porto Rico, duly appointed, and now discharges the duties of that position in accordance with the law in force.

The defendant is a civil limited partnership organized under the laws of Porto Rico. According to the information and belief of the plaintiff, the defendant firm or entity is made up of the following persons who have associated themselves for the carrying on of the business of cultivating sugar cane under the said name in general in Porto Rico: Frank A. Dillingham, Horace Havemeyer, William H. Morgan, as regular partners; and Frank M. Welty, Edwin L. Arnold and H. B. Orde, as silent partners; the plaintiff not knowing the residence and nationality of the stated persons.

[fol. 88] II. The defendant company is owner of and derives benefits in the cultivation of cane, from the following pieces of land:

(1) Farm marked as No. 295 of the plan of the Porto Rican Southern coast irrigation system, called Cristina, with a total area of 914.90 acres, situated in the Amelas ward of the municipality of Juana Diaz, whose boundaries are the following: On the north the Jacaguas river and lots Nos. 371A, 374, 375, 377 and the main road from Ponce to San Juan; on the south, lot No. 366A, Jacaguas river, lots Nos. 291, 925C, 296, 359, 364, 366; on the east, lots Nos. 294, 296A, 317A, 319A, 323A; on the west the Jacaguas river and lots number 371 and 383.

(2) Farm called Hacienda Luciana marked as No. 379, situated in the wards of Collores Collado and Jacaguas of the municipality of Juana Diaz, with a total area of 736.71 cuerdas, the boundaries of which are the following: On the north the Jacaguas river; on the south the Jacaguas river and the main road; on the east the road between Villalba and Juana Diaz; on the west Lot No. 380 and the Jacaguas river.

(3) Farm No. 403 of the said plan, named Hacienda Fortuna, situated in the Sabana Llana ward of the municipality of Juan a Diaz, with a total area of 913.44 cuerdas, with the following boundaries: On the north lots number 307A, 335, 336, 334, 338, 339, 340, 391, 399, 402, 423 and the Jacaguas river; on the south lots Nos. 403 and 413 and the Jacaguas river; on the east the Jacaguas river; on the west the lots Nos. 412, 414, 421 and 423.

(4) Farm No. 403, named Hacienda Fortuna, situated in the Sabana Llana ward of the municipality of Juana Diaz, with an area of 913.44 cuerdas which are here set forth: On the north lots 307A, 335, 336, 334, 338, 339, 340, 391, 399, 402, 423 and the Jacaguas river; on the south lots Nos. 403 and 413 and the Jacaguas river; on the east the Jacaguas river; on the west the lots Nos. 413, 414, 421 and 423.

(5) Farm No. 309, called Hacienda Serrano, situated in the municipality of Juana Diaz, with an area of 558.69 cuerdas and with the following boundaries: On the north [fol. 89] by lots Nos. 308 and 312; on the south by the Caribbean Sea; on the east lot No. 308; on the west lots Nos. 308, 310, 311 and 316.

A certified copy of the plan of the irrigated district of the southern portion of the island, insomuch as to that part

which is pertinent, accompanies this complaint and is made to form a part thereof.

III. The farms described in paragraph 2 of this complaint have been supplied since the year 1915 and are now being supplied with water for the purpose of irrigation from the public irrigation system on the southern side of Porto Rico by virtue of a contract entered into between their owners, predecessors of the defendant company in their ownership, and the Commissioner of the Interior of Porto Rico, which contract, entered into the 26th of August, 1914, was set forth in deed No. 20, executed in San Juan, Porto Rico, the 8th of July, 1916, before the notary Mr. Frank Antonsanti.

The plaintiff alleges that all the officials of the Government of Porto Rico charged with the compliance on the part of The People of Porto Rico with the stipulations of the said contract have complied with same in their entirety, and in consequence the farms described in paragraph 2 of this complaint have received and are receiving all the volume of water agreed for the purposes of irrigation and from which their owners, i. e., the entity Russell & Co., S. en C., defendant, and its predecessors who executed the said contract have benefitted.

IV. The plaintiff alleges that the described pieces of land have not been nor are they subject to payment of the regular or ordinary tax imposed by the general law of public irrigation, with its amendments in force in Porto Rico, upon the owners benefitted by the irrigation; but that the defendant is obligated by law No. 49, approved the 8th of July, 1921, to pay to The People of Porto Rico a special tax to be applied exclusively to the payment of expenses of administration and maintenance of the irrigation system of the Southern District of the island.

The plaintiff alleges that, in accordance with the provisions of the said law, the defendant is obligated to pay the following amounts for the reasons indicated:

[fol. 90]

On the farm No. 295 for the fiscal years from 1922-1923 to 1929-1930, up to the month of March, 1930, the sum of	$4,391.14 as taxes
and	1,029.07 as surcharges

On the farm No. 379 from 1922-1923 up to 1929-1930	7,466.10	as taxes
and	1,749.68	as surcharges
On the farm No. 403 for the same fiscal years and up to March, 1930	11,279.30	as taxes
and	2,643.33	as surcharges
On the farm No. 403 for the same years and for the further reason of belonging in class C described in Section 2 of the stated law	2,707.46	as taxes
and	634.49	as surcharges
On the farm No. 413, taxes for the same years and up to the stated date	4,485.94	
and	1,051.49	

Résumé

Total of taxes owed by the mentioned farms	$49,918.56
Total surcharges owing according to law	11,698.48
Total	$61,617.04

V. The plaintiff alleges that subsequent to the year 1922 the Treasurer of Porto Rico has endeavored to collect from the defendant the corresponding taxes assessed accordant with the provisions of the said law No. 49 of 1921, and that the defendant has refused to pay them, notwithstanding repeated demands for payment; and that the defendant has repaired to the District Court of the United States for Porto Rico praying for and obtaining restrictive remedies which have prevented the plaintiff up to within a short time past from exercising its last resources to effect the collection of the said taxes and legal surcharges.

[fols. 91 & 92] Wherefore, the plaintiff prays the court to sustain this complaint and for a judgment condemning the defendant to pay to the plaintiff into the Treasury of Porto Rico the sum of $61,617.04 together with its legal

interest from the filing of this complaint, and the costs expenses and attorney's fees occasioned in this litigation.

San Juan, Porto Rico, June 23, 1930.

James R. Beverley, Attorney General. M. Rodriguez Serra, Assistant Attorney General.

Filed June 24, 1930. J. N.

A true copy. Attest:

Lulu G. Donohue, Clerk, by F. R. Vareta, Deputy. (Seal.)

[fol. 93] In United States Circuit Court of Appeals for the First Circuit, October Term, 1931

No. 2678

The People of Porto Rico, Plaintiff, Appellant,

v.

Horace Havemeyer et al. (Russell & Co., Sucrs., S. en C.), Defendants, Appellees

Appeal from the District Court of the United States for the District of Porto Rico

Before Bingham, Wilson, and Morton, JJ.

Opinion—June 27, 1932

Bingham, J.:

This is an appeal from a judgment of the federal District Court in Porto Rico of December 21, 1931, dismissing the suit at law of the plaintiff-appellant on its merits. The action was brought to recover $61,617.04 due as an alleged tax under an Act of the Porto Rican Legislature (No. 49) of July 8, 1921, entitled "An Act fixing a tax on certain lands using water from the Southern Coast Public Irrigation System on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes." By agreement of the parties the case was tried by the court without a jury upon certain agreed facts and records. A general verdict or finding was made by the court in favor of the defendants, no special findings being made.

The action was brought in the District Court of San [fol. 94] Juan. The members composing the defendants' partnership removed the case to the federal District Court on the ground of diversity of citizenship. After the case was removed the plaintiff moved to remand the same. The motion was denied and the defendants answered, setting up a number of special defenses resting on the alleged invalidity of Act No. 49. The plaintiff demurred to the special defenses and the demurrer was overruled. After trial was had and a general verdict or finding in favor of the defendants was made, judgment was entered for the defendants and the plaintiff appealed.

The suit was brought June 24, 1930. November 13, 1930, the plaintiff filed an amended complaint, the material differences between the two complaints apparently being that, while the original one named all the persons, except one, constituting the defendants' partnership, it stated that their residences and nationality were not known, while in the amended complaint it stated the names of all the parties constituting the firm and gave their residences and citizenship, showing them all to be citizens and residents of states of The Union, except one who is a citizen of Great Britain residing in Canada.

It appears that the partnership, Russell & Co., Sucesores, S. en C., is composed of Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, Frank M. Welty and H. B. Orde; that they are owners through purchase from Fortuna Estates of four tracts of land known as Haciendas Fortuna, Cristina, Luciana and Serrano, and sublessees of two other tracts known as Haciendas Union and Placeres (title to the last two tracts being in Jose A. Poventud and others), all of which tracts of land lie along or abut upon the Jacaguas River; that each of these properties has appurtenant thereto rights to take water for irrigation purposes from the Jacaguas River by virtue of certain concessions and royal decrees of the Kingdom of Spain and by user and prescription; that for more than twenty years prior to August 26, 1914, Fortuna Estates, defendants' predecessor in title, and Poventud and others, their immediate lessors, had been taking and using water from the Jacaguas River for irrigation of these lands when-

[fol. 95] ever physically possible up to the aggregate amounts of the concessions; that the water was taken from the bed of the river through intakes built and maintained by the defendants or their predecessors, and also by the Aruz pump at Maturi Pool and by the Union pump; that there were also appurtenant to these properties, by virtue of concessions and royal decrees and by user and prescription, rights to take for irrigation purposes torrential waters which may exist in the Jacaguas River without limit as to quantity, except as limited by the size and location of the torrential intakes established by virtue of the said concessions, royal decrees, user and prescription; that in accordance with the provisions of the Public Irrigation Law approved September 18, 1908 (Laws of Porto Rico, 1908, Special Session, p. 44), as amended in 1911 (Laws of Porto Rico, 1911, p. 237) and by the Irrigation Law of 1913 (Laws of Porto Rico, Extraordinary Session, 1913, p. 54), The People of Porto Rico undertook the construction of a public irrigation system on the south coast of Porto Rico, and, in so doing, erected a dam for impounding and storing the waters of Jacaguas River, known as the Guayabal Dam, which extends across the bed of Jacaguas River, above the intakes which the defendants used for taking water for irrigating the tracts of land above mentioned; that the irrigation law provided that The People of Porto Rico might acquire existing water rights on the Jacaguas River in two ways: (1) by condemnation, in which case the owners would be paid in cash the fair value of their existing rights; and (2) by contracting for the relinquishment of their concessions or water rights by mutual agreement, in which case the owners would be paid not in cash but by receiving credits upon their proportional part of the expense of construction, operation and maintenance of the system; and that, if neither of these methods was pursued, Section 13 of the Act of 1913 (p. 72) provided that "such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession"; that Fortuna Estates, defendants' predecessor in title to the Haciendas [fol. 96] Fortuna, Cristina, Luciana and Serrano, and J. A. Poventud and others, the owners of Union and Placeres, refused to relinquish their concessions and the rights were not

condemned; that, in view of this, The People of Porto Rico, as authorized by the Irrigation Laws, entered into negotiations with Fortuna Estates and the owners of Union and Placeres for the purpose of fixing, in accordance with Section 13 and other provisions of law, the time and place at which the amounts of water, other than torrential water, which they were entitled to take for these six estates should be made available to the owners after the Guayabal Dam was completed and in operation; that, as a result of said negotiations, The People of Porto Rico, on August 26, 1914, entered into two contracts, one with Fortuna Estates and the other with J. A. Poventud and others, which contracts, so far as this controversy is concerned, are of a like nature; that by these contracts the amount of water which is the reasonable equivalent in value of the water rights or concessions pertaining to each tract was determined and that the same should be taken thereafter in regular daily amounts,—the amounts agreed upon being substantially less than the amounts specified in the concessions, to wit: 3,773.81 acre feet less for the four Fortuna Estates tracts and 6,331.76 acre feet less for the two tracts, Union and Placeres; that to make up the fair equivalent additional water might be taken out of surplus waters if there were any; that, so far as Fortuna Estates was concerned, the intakes through which the water was to be furnished under the contract were intakes provided by Fortuna Estates, and, so far as the water was to be pumped from the bed of the river it was "to be taken by pump at a pumping station heretofore established by the Fortuna Estates * * * known as the Aruz Pumping Station"; that leading from the intakes they had established canals on their properties which took the water to reservoirs, likewise established on their properties, from which they distributed such waters; that the contract as to Union and Placeres contained like provisions as to intakes and pump; that the contracts also provided that torrential waters could be taken from the river but that the government was not to be restrained from holding in the reservoir above the dam such torrential [fol. 97] waters as it was legally entitled to restrain; that the contracts set out and specified the number of acre feet per year which each estate was entitled to receive and it was agreed that "the quantities of water [thus] specified

The People of Porto Rico will * * * make delivery * * * for the irrigation of said tracts."

It further appears that while the several estates have been supplied since 1915 with the water agreed upon in accordance with the terms of said contracts of August 26, 1914, neither the defendants nor their said lands have at any time been "supplied with any water for the irrigation of said lands or for other purposes from said Southern Coast Public Irrigation System except such waters as" they and their lands "were and are entitled to receive under and by virtue of the contracts of August 26, 1914"; that, as required by Act 49 of 1921, the Treasurer of Porto Rico has assessed against the lands in question a special tax for the fiscal years 1922-23 to 1929-30, inclusive, in amounts aggregating $49,918.56 plus interest amounting to $11,698.48, which sums have not been paid.

In the assignments of error here argued and relied upon the plaintiff complains that the court erred (1) in failing to remand the case; (2) in holding that Act No. 49 of July 8, 1921, was void (a) as impairing the obligation of the contracts between Porto Rico and the defendants, (b) as taking private property without due process of law, (c) as violating the Organic Act which provides that taxation in Porto Rico shall be uniform, (d) as in conflict with the Treaty of Paris, (e) as violating the equal protection clause of the Organic Act, (f) in that it delegates to administrative officers the legislative function of levying taxes, and (g) in that it makes no provision for hearing or appeal before the taxes become fixed; and (3) that the court erred in rendering judgment for the defendants.

The first question raised by the assignments of error is that of the jurisdiction of the federal District Court. It is conceded that the amount involved is more than $3,000 exclusive of interest and costs. It is also conceded that the parties constituting the partnership of Russell & Co., Sucesores, S. en C., are none of them citizens of or domi- [fol. 98] ciled in Porto Rico, and that The People of Porto Rico, the party plaintiff, is a sovereign political entity created by the Act of Congress of March 2, 1917, the Organic Act. But inasmuch as the partnership Russell & Co., Sucesores, S. en C., was organized under the laws of Porto Rico and, under those laws, is an independent juridic entity, may sue and be sued in its name, and make contracts, the

plaintiff contends that it is to be regarded as domiciled in Porto Rico, the same as if it were a corporation.

This question was first presented to this court by the very parties now before us, in The People of Porto Rico v. Fortuna Estates et al., 279 Fed. 500, 505, in which the statutes affecting the jurisdiction of the federal District Court in Porto Rico and the right of removal thereto from the local island courts are set out. It is therefore unnecessary to repeat them here. In that case we held "that, where the jurisdiction of a federal court over a suit brought against a partnership depends upon diversity of citizenship, the question is to be determined by the citizenship of its members, whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name." That case was decided March 8, 1922. The People of Porto Rico applied to the Supreme Court of the United States for a writ of certiorari and the application was denied. 259 U. S. 587. In support of the conclusion reached in that case we called attention to the following authorities: Chapman v. Barney, 129 U. S. 677, 682; Great Southern Fire Proof Hotel Co. v. Jones, 177 U. S. 449, 455; McLaughlin Bros. v. Hallowell, 228 U. S. 278; Bruett & Co. v. Austin Drainage Excavator Co., 174 Fed. 668; Columbia Digger Co. v. Rector, 215 Fed. 618; Empire Rice Mill Co. v. Neumond, 199 Fed. 800. In Goico v. Russell Co., 4 F. (2d) 7, the same Russell & Co. were before the court as defendants as are now, and the same question of jurisdiction was again raised and decided. There the suits had been brought in the District Court for the Judicial District of Ponce and removed to the federal District Court and after removal the motion to remand was denied. This case was decided [fol. 99] February 18, 1925, about three years after our prior decision. We there said:

"This contention is without merit. The defendant partners are domiciled in the United States and Great Britain. It is immaterial that under the law of Porto Rico the partnership is an entity referred to in the singular number. This court held in Porto Rico v. Fortuna Estates, 279 F. 500 (the same partnership now defendant in this suit), that 'where the jurisdiction of a federal court over a suit brought against a partnership, depends upon diversity of citizenship, the question is to be determined by the citizenship of

its members, whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name.' Compare also Mestre v. Russell & Co. (C. C. A.) 279 F. 44. These decisions are conclusive on the right of the defendant to remove."

In view of the consideration given to this question in our prior decisions, we do not find it necessary to consider the matter further. The motion to remand was properly denied.

In the District Court it was held that Act No. 49 of July 8, 1921, violated that clause of Section 2 of the Organic Act of Porto Rico wherein it is provided "that no law impairing the obligation of contracts shall be enacted." 39 Stat. 951.

As above pointed out the provisions of the contract of August 26, 1914, between The People of Porto Rico and Fortuna Estates, relating to the rights of the defendants to water for the tracts Fortuna, Cristina, Luciana and Serrano, are the same as those of the contract for water for the tracts Union and Placeres, and what is to be said in relation to the first named contract applies with equal force to the latter.

In People of Porto Rico v. Russell & Co., 268 Fed. 723, this court had before it the authority of the Commissioner of the Interior, acting under the advice of the Attorney General of Porto Rico, under the Act of February 29, 1908 (authorizing the establishment of the Irrigation District), as amended by the Acts of March 9, 1911 and August 8, 1913, and particularly Section 13 of the latter Act, to enter into such contract and, in the course of the opinion (p. 726), we said:

[fol. 100] "The power of the government officials to contract with the owners of water rights was, under this section [Section 13] of the statute, limited to giving in exchange for the old water rights water which would be a fair equivalent in value."

It is also pointed out that the Guayabal Dam and other irrigation appurtenances had been substantially completed in March, 1914, before the contract of August 26, 1914, was entered into; that the four tracts of land owned by Fortuna Estates had appurtenant thereto old water rights aggre-

gating 11,032.79 acre feet per year, besides an unlimited right to take torrential waters; that, in the construction of the irrigation system, Porto Rico had erected the Guayabal Dam for the purpose of storing the waters of Jacaguas and Toro Negro rivers, thereby interrupting or impairing the plaintiff's old water rights which had not been relinquished or surrendered; and that, whereas the amount of water received by Fortuna Estates for its four tracts of land under its old concessions varied from month to month, depending upon the rainfall in the watershed of the Jacaguas River, and whereas The People of Porto Rico was ready to deliver to said Fortuna Estates the amount of water to which it was entitled under said concessions, nevertheless "in order to facilitate and make more certain [possible] the operation of the said dam and the irrigation system of which it is a part, desires to determine and agree upon an amount of water which, delivered regularly, may, under all attending circumstances, be considered to be the fair equivalent in value for irrigation purposes of the amount of water which the Fortuna Estates would under ordinary circumstances take and use under the said water rights and concessions"; and that, in view of this, the parties therein agreed, for Fortuna, upon 3,306.45 acre feet per year, or 92 per cent of its old concessions appurtenant thereto, for Cristina, on 1,312.48 acre feet per year or 48 per cent of its old concessions, for Luciana, 1,260.22 acre feet per year or 59 per cent of its old concessions, and for Serrano, 2,379.63 acre feet per year or 90 per cent of its old concessions; and Porto Rico agreed that it would deliver these amounts of water to the respective estates, together with additional [fol. 101] water out of surplus, if there was any surplus; that the same were "the fair equivalent in value of the water which said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, make delivery to the Fortuna Estates for the irrigation of said tracts of land" of said amounts of water.

It is further pointed out in that opinion that the reduction in the amounts of water allowed from an aggregate of 11,032.78 acre feet to 8,258.98 acre feet (about 75 per cent) was grounded on the principle of equivalence, and

the variation in percentage to the different estates rested on the order of suspension in times of shortage.

It thus appears that the amounts of acre feet of water per year agreed upon in that contract were the equivalent in value of the old water rights or concessions which Fortuna Estates owned and which it had not relinquished to The People of Porto Rico, and that The People of Porto Rico agreed to deliver those amounts uniformly throughout the year and further specified the number of feet to be delivered per day, and the consideration therefor was the right acquired by The People of Porto Rico to carry out its irrigation scheme and operate its dam and hold back and store therein the waters of Jacaguas River, which otherwise it could not do, for the Irrigation Act of 1908, as amended in 1911 and 1913, did not make any of the lands here in question a part of the irrigation district thereby constituted. The lands embraced in the district consisted of three classes—(1) lands which had no water rights, appurtenant or otherwise, (2) lands as to which the old water rights or concessions, appurtenant thereto, had been condemned and paid for by the Irrigation System, and (3) lands as to which the old water rights or concessions appurtenant thereto had been relinquished on the condition that their values should be applied to defray their proportion of the construction, maintenance and operation of the system. But in 1921 the Legislature of Porto Rico, in Section 1 of the Act No. 49, provided:

[fol. 102] "That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation law and amendments thereto, *but which* under the *present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.*" (Italics ours.)

In other words, by this Act the Legislature of Porto Rico, without making these lands a part of the irrigation district, imposed a special tax upon the defendants because of the water agreed to be supplied from the irrigation system under the contracts of August 26, 1914, and

which The People of Porto Rico was to deliver as the equivalent in value for the old water rights that the defendants owned, the latter rights being suspended during the continuance of the contracts. People of Porto Rico v. Russell & Co., 268 Fed. 730. It is the imposition of this burden upon their right under the contracts to receive the amounts of water there stipulated for of which the defendants complain that the Legislature of Porto Rico, in enacting the law, violated Section 2 of the Organic Act, which provides:

"That no law impairing the obligation of contracts shall be enacted."

We fail to see how it can be contended that this Act does not impair the obligation of the contract which The People of Porto Rico made with Fortuna Estates, and likewise of the contract which they made with Mr. Poventud and his co-owners; and we have been unable to find in the briefs of counsel for the plaintiff any argument or suggestion leading to a contrary conclusion. The Act clearly imposes a burden upon the defendants' right to receive the waters agreed to be delivered to them by The People of Porto Rico as a substitute for their old water rights.

The Supreme Court of the United States, in considering a like provision of the federal Constitution from which this provision of the Organic Act was undoubtedly taken, said:

"A state can no more impair, by legislation, the obli- [fol. 103] gation of its own contracts, than it can impair the obligation of the contracts of individuals. We shall naturally look to the action of a sovereign state, to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals." Woodruff v. Trapnall, 10 How. 190, 207. See also Fletcher v. Peck, 6 Cranch 87; Green v. Biddle, 8 Wheat. 1, 92; Hall v. Wisconsin, 103 U. S. 5; Antoni v. Greehow, 107 U. S. 769, 795.

And as to whether a state or a municipality, under the guise of levying taxes, may impair the obligation of a contract, the Supreme Court in Murray v. Charleston, 96 U. S. 432, said:

"We do not question the existence of a State power to levy taxes * * * nor the subordination of contracts to it, so far as it is unrestrained by constitutional limitation. But the power is not without limits, and one of its limitations is found in the clause of the Federal Constitution, that no State shall pass a law impairing the obligation of contracts. * * * The constitutional provisions against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume. (Page 444.)

"There is no more important provision in the Federal Constitution than the one which prohibits States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of all well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed." (Page 448.)

See also Cooley on Taxation (4th ed.), sec. 36, page 18.

It seems to us that the Act amounts to saying that in the future Fortuna Estates' right to receive the water which The People of Poro Rico contracted to deliver to them in substitution for their old water rights and concessions shall be subject to their paying the taxes in question and impairs the obligation of The People of Porto Rico to furnish to Fortuna Estates water which the former agreed to deliver the latter.

[fol. 104] Error is also assigned to the ruling of the court that Act No. 49 of 1921 is void on the ground that it delegates to administrative officers the legislative function of levying taxes. By Section 2 of that Act the Legislature prescribes a method by which the rate and amount which lands having water rights exchanged for old concession by the contracts of August 26, 1914, should be taxed to help defray the expenses of maintaining and operating the irrigation system. According to the method there pointed out the Treasurer is first to determine the total number of acres in tracts of land receiving water from the irrigation system, including therein (1) tracts of land subject to taxation

under the irrigation law to pay the cost of the irrigation works (these are lands included in the irrigation district that had no appurtenant water rights, or, if they had any water rights, they had been condemned and paid for); (2) tracts of land (included in the irrigation district), the water rights appurtenant thereto the owners had released and had credit for; (3) tracts of land (outside the irrigation district) having water rights which had not been relinquished and which, under the contracts with The People of Porto Rico, were to be delivered in whole or in part at the canals of the irrigation system and be there measured; and (4) tracts of land (outside the irrigation district) having water rights that had not been released and paid for, which, under contracts with The People of Porto Rico, were to be taken and measured in the river at the points of intake indicated in their old concessions.

In determining the amount to be raised, the Treasurer of Porto Rico is directed to take the amount estimated by the Commissioner of the Interior to defray the cost of operation and maintenance of the irrigation system for the following fiscal year (the estimate of the Commissioner to be made and certified as provided in Section 11 of Act No. 128 of August 8, 1913), and add to this estimated amount or subtract therefrom, as the case may be, any resulting deficit below or surplus above the amount expended for operation and maintenance of the system the preceding year. The Treasurer is then to divide the amount so determined by the total number of acres (arrived at as prescribed in the [fol. 105] Act) to get the tax rate per acre to be levied during the subsequent fiscal year on lands outside the district which are not subject to a tax to meet the cost of the system.

The provision complained of in Section 2 of Act No. 49 as delegating legislative power is the one requiring the Treasurer in ascertaining the rate for assessing the tax "to take the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation and maintenance of the irrigation system during the following fiscal year." The contention is that the Legislature could levy and authorize the assessment of the tax in either one of two ways. It could itself fix a flat rate at which the receivers of water could be taxed per acre foot, or it could itself determine the amount of money to be raised for the ensuing year to defray the expenses of main-

tenance and operation, but that it could not delegate the determination of that amount, and thereby the rate, to the discretion of the Commissioner of the Interior; that the determination of the amount to be raised or the rate is a legislative matter involving discretion, which the legislature cannot delegate to administrative officers.

Counsel for the plaintiff, however, contend that the determination of the amount to be raised for an ensuing year is a pure matter of computation, and that the Act has pointed out how that computation shall be made. But this clearly is not so, for the amount to be raised is, by the terms of the Act, to be estimated by the Commissioner of the Interior, and as this estimate involves the exercise of legislative power, it could not be delegated to the Commissioner.

In Van Cleve v. The Commissioners, 71 New Jersey Law 574, the court, in discussing a kindred matter, said:

"Every system of taxation consists of two parts—the elements that enter into the imposition of the tax and the steps taken for its assessment and collection. The former is a legislative function, conserved by constitutional prescriptions; the other is mere machinery. The latter may be delegated to other than governmental agencies; not so the former. Matters of computation, appraisement, adjustment and such like, involving mere certainty of detail, [fol. 106] follow the delegable power, * * *; but no element that enters essentially into the tax itself may be so delegated (citing State v. Sickles, 4 Zab. 125; State v. Koster, 9 Vroom 308; and Munday v. Rayway, 14 id. 339). * * * 'These decisions are precedents in our own courts, affirming the want of power in the legislative body in which the power of taxation is vested to delegate the authority to others to determine in its judgment or discretion the amount to be raised by taxation'." (Page 581.)

It is also said:

"* * * this court is unequivocally committed to the doctrine that the legislature of this state, in which the governmental power of taxation resides, does not possess the power to delegate * * * the authority to determine, in its judgment or discretion, the amount to be raised by taxation, to which obviously must be added that such au-

thority is in effect so delegated if such body may be empowered to levy taxes to the amount of an indebtedness to be incurred by it in its judgment or discretion." (Page 58.)

See also Cooley on Taxation (4th Ed.) Vol. 1, pp. 184, 194; Vol. 3, p. 2044, 37 Cyc. p. 725.

As the conclusions reached dispose of the case, we do not think it necessary to consider the other questions raised.

The judgment of the District Court is affirmed with costs.

[fols. 107-123] Petition for rehearing, covering 17 pages, filed July 26, 1932, omitted from this print. It was denied and nothing more by order of August 5, 1932.

[fol. 124] On April 27, 1932, a certified copy of the bill of complaint (page 87) was filed by leave of court.

On the same date, to wit, April 27, 1932, this case came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting:

Thereafter, to wit, on the twenty-seventh day of June, A. D. 1932, the opinion of the court (page 93) was filed and the following Judgment was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—June 27, 1932

This cause came on to be heard April 27, 1932, upon the transcript of record of the District Court of the United States for the District of Porto Rico, and was argued by counsel.

Upon consideration whereof, It is now, to wit, June 27, 1932, here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed with costs.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING REHEARING—August 5, 1932

No judge who concurred in the judgment entered June 27, 1932, desiring a rehearing, It is ordered that the petition for rehearing filed July 26, 1932, be, and the same hereby is, denied.

By the Court.

Arthur I. Charron, Clerk.

MEMORANDUM RE STAY OF MANDATE

Thereafter, to wit, on August 18, 1932, mandate was stayed until further order of the court.

[fol. 125] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 126] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 5, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,189. U. S. Circuit Court of Appeals, First Circuit. Term No. 492. The People of Porto Rico, Petitioner, vs. Russell & Co., Sucrs., S. en C.: Horace Havemeyer, Frank A. Dillingham, et al. Petition for a writ of certiorari and exhibit thereto. Filed November 4, 1932. File No. 37,189.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

RUSSELL & CO., *Succrs. S. en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, EDWARD S. PAINE, FRANK M. WELTY, EDWIN L. ARNOLD *and* H. B. ORDE, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT,
AND
SUPPORTING BRIEF

WILLIAM CATTRON RIGBY,
Colonel, Judge Advocate,
FRED W. LLEWELLYN,
Major, Judge Advocate,
Attorneys for Petitioners.

CHARLES E. WINTER,
Attorney General of Puerto Rico,
BLANTON WINSHIP,
The Judge Advocate General,
Of Counsel.

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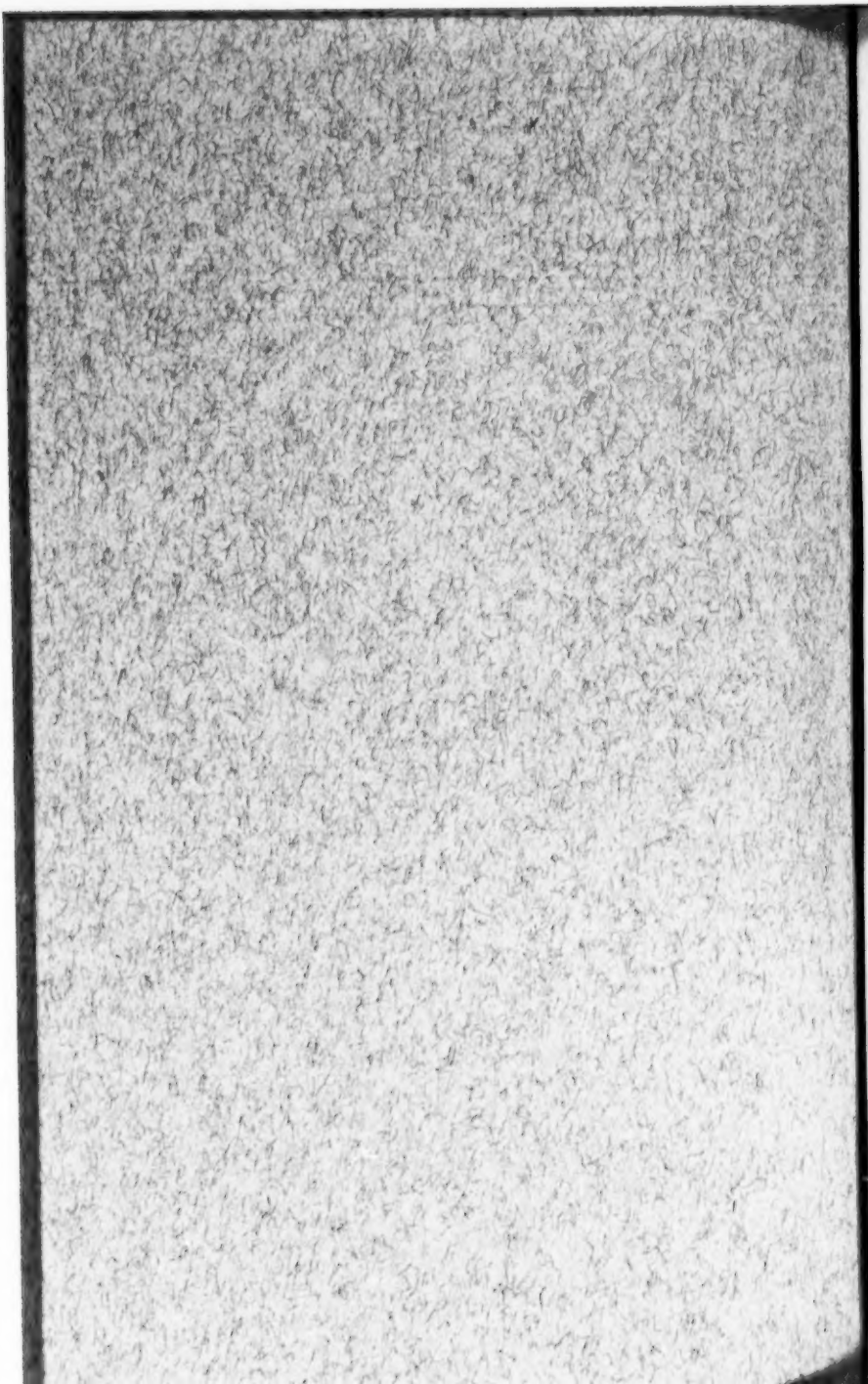

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

RUSSELL & CO., *Sucrs., S. en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, EDWARD S. PAINE, FRANK M. WELTY, EDWIN L. ARNOLD *and* H. B. ORDE, *Respondents.*[1]

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, The People of Puerto Rico, prays a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the First Circuit, entered in this cause on June 27, 1932, affirming a judgment of the District Court of the United States for Puerto Rico, declaring invalid Puerto Rican Act No. 49 of 1921, and dismissing petitioner's suit for collection of special assessments under that Act.

A rehearing was denied on August 5, 1932 (R. 124).

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[1] This action was initiated against Russell & Company, a *sociedad en comandita*, organized and existing under the laws of Puerto Rico, as the sole party defendant (Complaint, R. 87-91). The individual respondents are the individual mem-

QUESTIONS PRESENTED

1. Does a suit begun in an insular district court of Puerto Rico, by The People of Puerto Rico, against a *sociedad en comandita*[2] organized under the laws of Puerto Rico, as the sole party defendant, none of whose individual members is, however, a citizen of Puerto Rico, involve such diversity of citizenship as, upon that ground alone, to invest the United States District Court for the District of Puerto Rico with jurisdiction upon petition for removal by the individual members of the *sociedad* (whom the plaintiff had not made parties defendant to the suit), under section 42 of the Organic Act for Puerto Rico (Act of March 2, 1917, 39 Stat. 951, 966; 48 USCA 864) and sections 24 and 28 of the Judicial Code of the United States (Act of March 3, 1911, 36 Stat. 1091 and 1094; 28 USCA 41 and 71)?

2. Is Puerto Rican Act No. 49 of 1921, imposing upon all lands irrigated from the Southern Coast Public Irrigation

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bers of that *sociedad*, who first came into this cause by their special appearance in their petition for removal of the case from the insular District Court of San Juan, Puerto Rico, to the United States District Court for Puerto Rico (R. 6-9), and who have been permitted ever since to continue as individual parties to the action. But petitioner-plaintiff instituted the suit in the insular court against the *sociedad* alone, and insists here, as it did in each of the lower courts, that the respondent *sociedad*, in its separate capacity as a juridical person, under the Puerto Rican laws, was the sole proper party defendant and appellee in the lower courts, and is in reality the sole proper party respondent here. The individuals are, however, named here as additional parties respondent because the lower federal courts allowed them to force their way into this suit and to remove it to the federal courts.

[2] *Sociedad en Comandita* is imperfectly translated in the official English versions of the Civil Code and of the Code of Commerce as "limited partnership." But the concept of the Spanish civil law *sociedad* is wholly different from that of the common law "partnership" (see *infra*, pp. 19-25). The *sociedad* is always inherently a juridical person.

System, not theretofore taxed on that account, a special annual assessment for their respective *pro rata* shares of the annual costs of operating and maintaining that system, invalid as violating, when applied to lands of the respondent *sociedad*, paragraph 5 of section 2 of the Organic Act for Puerto Rico (Act of March 2, 1917, 39 Stat. 951; 48 USCA 737), by impairing the obligations of contracts theretofore made in 1914 between the People of Puerto Rico and the owners of those lands, whereby the latter, in exchange for water rights under preexisting government concessions appurtenant to their lands, were granted the rights thereafter to receive from that system, for the irrigation of those lands, water in specified amounts at specified times and places, which was agreed to be the equivalent in value of the preexisting concessions?

3. Are those parts of Puerto Rican Act No. 49 of 1921 in substance requiring the insular Treasurer to determine the amount of each annual levy thereunder primarily upon an estimate to be made by the insular Commissioner of the Interior of the cost of operating and maintaining the system for the ensuing year, invalid as an attempted delegation of legislative power to executive officials, in violation of the Organic Act for Puerto Rico (Act of March 2, 1917, 39 Stat. 951 *et seq.*; 48 USCA 731 *et seq.*)?

Each of the foregoing questions was answered in the affirmative by the United States Circuit Court of Appeals for the First Circuit; and that court, regarding those answers as decisive of the case, based its ultimate conclusions and judgment thereon, without discussion of other questions involved (Op. C.C.A.; R. 93-106). However, the respondent-defendant urged and the trial court held that the insular act was invalid also upon the further grounds that as applied to the lands in question it violates the due process, equal protection, and uniformity of taxation clauses of the Organic Act, and also violates the Treaty of Paris (Op. Dist. Court, R. 75-76).

Petitioner contends that each of the questions above stated should have been answered in the negative; that in-

sular Act No. 49 of 1921 is valid; and that, in any event, the federal courts did not get jurisdiction through the removal petition of the individual members of the *sociedad*, whom the plaintiff had not made defendants to the suit, and that the cause should be remanded to the insular courts.

STATUTES INVOLVED

Federal:

(1) The Organic Act for Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951) provides:

> Sec. 2. That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. * * *
>
> That no law impairing the obligation of contracts shall be enacted. * * *
>
> That the rule of taxation in Porto Rico shall be uniform. (39 Stat. 951, 952; 48 USCA 737).
>
> Sec. 25. That all local legislative powers in Porto Rico, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Legislature of Porto Rico." (39 Stat. 958; 48 USCA 811).
>
> Sec. 37. That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable * * *. (39 Stat. 964; 48 USCA 821).
>
> Sec. 41. That Porto Rico shall constitute a judicial district to be called "the District of Porto Rico." * * * The district court for said district shall be called "the District Court of the United States for Porto Rico." * * * Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. * * * Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute

exceeds, exclusive of interest or costs, the sum or value of $3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid; * * *. (39 Stat. 965; 48 USCA 863).

Sec. 42. That the laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several states shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico * * *. (39 Stat. 966; 48 USCA 864).

(2) Section 24 of the Judicial Code of the United States (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1091; 28 USCA 41),[3] provides:

Sec. 24. The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different states, or (c) is between citizens of a State and foreign States, citizens, or subjects * * *.

(3) Section 28 of the Judicial Code of the United States (Act of March 3, 1911, c. 231, 36 Stat. 1087, 1094; 28 USCA 71), provides:

Sec. 28. Any suit of a civil nature, at law or in equity arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United

---

[3] Although the petitioner does not regard this statute as among those properly involved (*infra*, p. 38), it is anticipated that the respondent may argue that it bears on the question of the jurisdiction of the trial court.

> States are given original jurisdiction, * * * in any state court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction, * * * in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that State. * * *

Insular:

(1) Certain provisions of the Puerto Rican Civil Code, of the Code of Commerce, and of the Code of Civil Procedure, define the characteristics of the *sociedad en comandita* as it exists in Puerto Rico under the Spanish civil law, and show among other things that it has complete juridical personality; and that, like a corporation, it acts; contracts; acquires, holds and conveys property; and sues and is sued; all in its own separate name and capacity, distinct and apart from its individual members. The official Spanish texts of these provisions, with English translations, are in Appendix IV to this pamphlet, *infra*, pp. 78-90.

(2) Act No. 49 of the Legislature of Puerto Rico, approved July 8, 1921 (Laws of Puerto Rico, 1921, p. 366), the act under attack in this case, of which the full text appears in Appendix I to this pamphlet (*infra*, pp. 57-59).

(3) The Act of the Legislature of Puerto Rico approved September 18, 1908, called the "Public Irrigation Law" (Laws of Puerto Rico, Special Session, 1908, pp. 44-70), provides for the construction, maintenance and operation of the irrigation system to which the Act of 1921 last above mentioned relates, of which Act of 1908 pertinent extracts appear in Appendix II to this pamphlet (*infra*, pp. 60-65).

(4) Act No. 128 of the Legislature of Puerto Rico, approved August 8, 1913 (Laws of Puerto Rico, Extra Session 1913 and Regular Session 1914, pp. 54-84), amends the Act of September 18, 1908, further provides for the construction,

maintenance and operation of the irrigation system in question, and authorizes the contracts set up in the answer, of which Act of 1913 pertinent extracts appear in Appendix III to this pamphlet (*infra*, pp. 66-77).

> NOTE.—The act of September 18, 1908, *supra*, was also amended by Act No. 74, approved March 9, 1911 (Laws of Puerto Rico, 1911, pp. 237-243), but not in any particular materially affecting the questions presented here.

STATEMENT

ANTECEDENT FACTS

The Southern Coast Public Irrigation System of Puerto Rico is comprised generally within the area on the south slope of the Island between and inclusive of the valleys of the rivers Patillas and Portugues, including the valley of the river Jacaguas (Sec. 1, act of Sept. 18, 1908, *infra*, p. 60). The works include a dam and reservoir in the upper Jacaguas valley, to impound the headwaters of that river and those of the river Toro Negro brought by tunnel through the divide from the well-watered north slope (R. 34-35).

At the time of the initiation of the project there were, within the area generally included within its scope, certain plantations each with appurtenant water rights acquired by concessions from the former Spanish government, or by appropriation and prescription, including the six plantations in the Jacaguas valley, then owned by grantors of the respondent *sociedad* and now held by that *sociedad*, four of them as owner and two as lessee, each of which had an appurtenant right to take certain waters from the Jacaguas River (R. 13, 15-22, 33-34, 49-50, 67-71).

It being apparent that the construction and operation of the system might impair these existing water rights, the Legislature provided in the act of 1908 for their extinguishment by condemnation, or by voluntary surrender in exchange for reduced rates of assessment (Appendix II, *infra*, pp. 61-63), and

in the Act of 1913 (Appendix III, *infra*, pp. 66, 75), provided further:

> Section 13. In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.
>
> The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights or concessions, * * * and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the land to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent.

Pursuant to the statutory authority last above quoted, the insular Commissioner of the Interior, on behalf of the People of Puerto Rico, and the then owners of the six plantations above mentioned, grantors of the respondent *sociedad*, made the contracts of August 26, 1914, which are set forth as Exhibits A and B to the answer, whereby the People of Puerto Rico agreed in substance to deliver from the irrigation system, to each of those plantations, specified quantities of water at specified times and places, agreed to be the equivalent in value of the preexisting water rights, and the owners of those plantations, respectively, during continuance of the specified deliveries, and in consideration thereof, agreed in substance to the suspension of their preexisting concessions and prescriptive rights. *Nothing was said in those contracts about taxes or as-*

sessments upon the rights thereby granted, or upon the lands therein described for benefits accruing thereto by the construction, maintenance and operation of the Irrigation System (R. 33-48, 49-61).

Up to the time of the trial of this case the contracts were still in force, and the lands therein described had continuously since 1915 received all of the waters to which they were entitled thereunder (par. 20, Agreed Statement, R. 72-73). But those lands, although thus supplied with water from the system, were not originally included within the irrigation district and, prior to the enactment of Act No. 49 of 1921, *supra*, had never been assessed for any part of the costs of the construction, maintenance or operation of the system (par. 21, Agreed Statement, R. 73). Since the enactment of Act No. 49 of 1921, *supra*, the Treasurer of Puerto Rico has levied and assessed thereunder against each of the plantations above mentioned, a special assessment for each fiscal year beginning with the fiscal year 1922-23, in amounts aggregating up to the time of the trial of this case the sum of $49,918.56, exclusive of interest and penalties for the same period, amounting to $11,698.48 (par. 23, Agreed Statement, R. 73-74). The respondent *sociedad* in 1917 acquired title to four of the plantations by deed, and possession of the other two by lease, and from that time until the trial of this case continued in possession thereof and liable for all taxes and assessments thereon (pars. 11 and 19, Agreed Statement, R. 69, 72).

Upon assessment of the plantations above described under the act of 1921 for the fiscal year 1922-23, the respondent *sociedad* brought suit in the United States District Court for Puerto Rico (in the names of its individual members) against the Treasurer of Puerto Rico to enjoin the collection of the tax. That court granted the injunction and the Treasurer of Puerto Rico then appealed to the United States Circuit Court of Appeals for the First Circuit, where the case was pending at the time of the passage of the so-called "Butler Act" of March 4, 1927, Section 7 of which so amended Section 48 of

the Organic Act for Puerto Rico as to deny to the United States District Court for Puerto Rico jurisdiction of any suit to restrain the assessment or collection of any Puerto Rican tax (44 Stat. 1418, 1421); and, after the decision of this court in *Smallwood* v. *Gallardo*, 275 U. S. 56, that injunction suit was dismissed for want of jurisdiction, under the authority of the latter case (*Gallardo* v. *Havemeyer*, 21 F. (2d) 1012).

Shortly thereafter Congress passed the act of April 23, 1928, c. 411, 45 Stat. 447, in effect limiting the petitioner to suit at law as the sole means of enforcing collection of the taxes in question.

COMPLAINT

The present action was initiated by the petitioner in the insular District Court of San Juan, Puerto Rico, by complaint filed June 24, 1930, against "Russell & Co., S. en C., Defendant" to recover the assessments, penalties and interest above mentioned in the sum of $61,617.04 (R. 87-91).

PETITION FOR REMOVAL

On July 23, 1930, the individual respondents, appearing specially for that purpose, filed in the insular District court their petition for removal of the case to the United States District Court for Puerto Rico, alleging in substance that they were the only members of the respondent *sociedad;* that five of them were citizens of certain states of the United States; that the sixth was a citizen of Canada; that none of them was a resident of or domiciled in the Island of Puerto Rico; and asking that the case be removed to the federal District Court upon the sole ground of diversity of citizenship between the parties (R. 6-9).

ORDER OF REMOVAL

On July 29, 1930, the insular District Court granted the petition and ordered the case removed to the federal court (R. 10) citing section 28 of the Federal Judicial Code, *supra*,

and the cases of *People of Porto Rico* v. *Fortuna Estates*, 279 Fed. 500; *Goico* v. *Russell & Co.*, 4 F. (2d) 7; and *South Porto Rico Sugar Co.* v. *Sepulveda*, 27 P. R. 310.

MOTION TO REMAND

In the federal District Court on August 14, 1930, petitioner filed its motion to remand the case to the insular District Court on the ground that the respondent *sociedad*, organized and existing as a so-called "civil limited partnership" [4] under the laws of Puerto Rico, was legally equivalent to a corporation in so far as its status as a party litigant was concerned, and that therefore there was no diversity of citizenship (R. 11-12).

ORDER DENYING MOTION TO REMAND

On the same date the United States District Court for Puerto Rico denied the motion to remand, to which your petitioner duly excepted (R. 80).

AMENDED COMPLAINT

Your petitioner on November 13, 1930, by leave of court, filed in the United States District Court its amended complaint in which some of the allegations of the original complaint were elaborated without, however, any change affecting the present questions (R. 1-6).

DEFENDANTS' ANSWER

On December 19, 1930, the individual respondents representing themselves as "constituting the civil agricultural partnership of Russell & Co., Sucesores, S. en C., the defendants in the above entitled action," filed their answer to the amended complaint (R. 13-61), admitting generally the essential allegations of fact of the amended complaint, setting up the contracts of August 26, 1914, above mentioned, and at-

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[4] The inaccurate phraseology of the official English translation of the Codes. (Cf. *infra*, pp. 19-25).

tacking the validity of the insular statute upon the various grounds indicated above under the heading of "Questions Presented," *supra*, pp. 2-4.

AGREED STATEMENT OF FACTS

After your petitioner had demurred generally to the answer (R. 61) and the demurrer had been overruled (R. 80), the case was tried by the United States District Court for Puerto Rico upon an agreed statement of facts (R. 66-75).

OPINION AND JUDGMENT OF THE DISTRICT COURT

On December 7, 1931, the United States District Court for Puerto Rico handed down its opinion (R. 75-76) finding in favor of the defendants and against the plaintiff, and declaring Act No. 49 of 1921 invalid upon the grounds (1) that it impairs the obligations assumed by the Government under the contracts of August 26, 1914; (2) that it takes private property without due process of law; (3) that it violates the uniformity of taxation rule; (4) that it is in conflict with the Treaty of Paris; (5) that it "violates the prohibition of the Organic Act against unequal protection under the law;" (6) that it delegates legislative powers to administrative officials; and (7) that it does not provide for any hearing or appeal. Accordingly, that court, on December 21, 1931, entered judgment for the defendants and against the plaintiff-petitioner (R. 76-77), from which your petitioner duly appealed to the United States Circuit Court of Appeals for the First Circuit, assigning as errors the refusal of the United States District Court to remand the case to the insular District Court and the holding of the United States District Court that Act No. 49 of 1921 was invalid on each of the grounds set forth in the opinion of that court (R. 77-80).

OPINION AND JUDGMENT OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

By its opinion filed June 27, 1932, the court last mentioned affirmed the judgment of the United States District

Court for Puerto Rico, holding in substance that there was no error in the refusal of that court to remand the case to the insular District Court, and declaring Act No. 49 of 1921 invalid upon the grounds of impairment of the obligations of the contracts and of improper delegation of legislative power (R. 93-106). Judgment was entered accordingly on the same day (R. 124). Petition for rehearing (R. 107-123) was denied August 5, 1932 (R. 124).

PETITIONER'S CONTENTIONS

(1) *As to the jurisdictional question*: The *sociedad en comandita*, organized and existing under the civil laws of Puerto Rico, actually possesses all of the distinctive legal characteristics of a corporation; is in legal principle and substance a corporation rather than a partnership, and is so held by the local court of last resort, the Supreme Court of Puerto Rico; and, therefore, with relation to the statutes governing the jurisdiction of federal courts, should be deemed and treated as a corporation; that, since it is organized under the laws of Puerto Rico, there is no diversity of citizenship between the original and only proper parties to this action, viz., the *sociedad* and the People of Puerto Rico; and that for the foregoing reasons the United States District Court for Puerto Rico had no jurisdiction thereof on the petition for removal from the insular District Court, presented by the individual members whom the plaintiff had not made defendants to the suit. (Supporting Brief, *infra*, pp. 19-39);

(2) *As to the question of impairment of the obligations of the contracts*: There is no such impairment, because the contracts did not grant any exemption whatever of the lands therein described from taxation of any kind; Act No. 49 of 1921 constitutes in effect a declaration by the insular Legislature that the lands thereby assessed are specially benefited by the operation and maintenance of the irrigation system, at least to the extent of the assessments imposed; and the enactment of that measure by the insular Legislature con-

stituted a legitimate exercise of its unquestioned and unquestionable authority and power to impose special assessments upon private lands for special benefits derived from public improvements (Supporting Brief, *infra*, pp. 39-50); and

(3) *As to the question of improper delegation of legislative powers*: When Act No. 49 of 1921 is considered in connection with the related prior acts of 1908 and 1913, and with the facts that when Act No. 49 was enacted the irrigation system to which it refers was an established and well-known entity which had been in existence and operating for more than six years, it is apparent that the function of determining annually in advance the approximate reasonable and necessary cost of maintaining and operating the system for the succeeding fiscal year was really an administrative function, involving no legislative discretion, but merely the ascertainment of the facts of previous experience and existing conditions, coupled with computations of the kinds, amounts and costs of labor and material required for the following year, and finally consolidation of the items so computed to find the approximate aggregate sum needed; that it has been the almost universal custom throughout this country from the beginning of its history, in ordinances and statutes providing for local improvements, to delegate such functions to administrative commissions, boards and officials; and that when Congress in the Organic Act for Puerto Rico delegated to the insular Legislature "all local legislative powers in Puerto Rico," it could only have been with the intention that that Legislature should thereby be empowered to follow similar practices and methods with relation to such assessments; and that, therefore, the act here in question, in leaving these details to be determined by the insular official in charge of the operation and management of the system, involves no improper delegation of legislative powers. (Supporting Brief, *infra*, pp. 50-56).

REASONS FOR GRANTING THE WRIT

The jurisdictional question here presented, although it may be of little or no importance in this particular case, is of

very great and widespread importance to the Spanish speaking people of Puerto Rico generally. The rich and powerful *sociedad* respondent in this case is not, by any means, the only one of its kind, owning property and doing business in the Island, but composed exclusively of foreign members. As a general rule the people of Puerto Rico habitually speak the Spanish language, and are unfamiliar not only with the English language, which is exclusively used in the federal court, but also with the practice and procedure of that court. They are accordingly at a distinct disadvantage in the trial in the Federal District Court of cases in which they are parties litigant. It is in the trial courts that the witnesses are heard and the facts are determined.

The inhabitants of Puerto Rico therefore regard it as a serious injustice to them to permit a *sociedad, actually a corporation in all but name,* organized under the laws of and domiciled within Puerto Rico, when suing, or being sued by, a Puerto Rican citizen, to drag its opponent into the unfamiliar and expensive environment of the United States court upon the technical ground that its members, who are really nothing more nor less than stockholders of a corporation, are citizens and residents of other jurisdictions.

In connection with the jurisdictional question, the case, as presented here, involves an important question of local law probably decided in conflict with applicable local decisions. As to the legal character and status of the *sociedad en comandita* under the laws of Puerto Rico, there is a clear conflict of opinion between the United States Circuit Court of Appeals for the First Circuit, as disclosed in its opinion in this and prior cases (Supporting Brief, *infra,* pp. 26-27), and the insular Supreme Court, as indicated by its opinion in *People* v. *Rivera Zayas* (Supporting Brief, *infra,* pp. 21-24).

The Circuit Court of Appeals, by citing and following *Great Southern Fire Proof Hotel Co.* v. *Jones,* 177 U. S. 449 (R. 98), has in effect declared the Puerto Rican *sociedad en comandita* to be nothing more or less than the familiar lim-

ited partnership of the states; whereas the insular Supreme Court, in its opinion last above mentioned, recognizes a definite distinction between those two kinds of entities, and in effect holds the *sociedad en comandita* to possess a juridical status substantially the same as that of a corporation. The question is one which has never been, and, we think obviously should be, finally settled by this Court.

The importance of the questions concerning the validity of the insular taxing statute under attack is self-evident. If the decision of the Circuit Court of Appeals in this case is permitted to stand it means that the whole system of ascertainment, apportionment and assessment of the annual costs of the operation and maintenance of the Southern Coast Public Irrigation System, uniformly followed for more than eighteen years, has been unlawful. The result would be not only the necessity of a prompt and extensive revision of the existing statutes, but, also, in all probability, the institution of numerous actions against the insular Government for refunds of taxes and assessments already collected and expended under those statutes.

Further importance lies in the fact that under the decisions of the lower courts the insular Legislature is faced with the embarrassing alternative of either (1) providing by law for the assessment of an arbitrary annual fixed water rate more than likely to be found in experience to be too high or too low, or else (2) undertaking itself annually to canvass the facts of prior experience and existing conditions and to make the detailed estimate necessary as a basis for determining the precise amount of the annual assessment.

As a further reason for the granting of the writ your petitioner respectfully urges that certiorari might well be granted by this Court almost as a matter of course to review judgments of the Circuit Courts of Appeals in cases which, like this, are closely analogous to those involving state statutes, described in paragraph (b) of section 240 of the Judicial Code of the United States, as amended by the Act of February 13,

1925, c. 229, 43 Stat. 936, 939, but which involve the validity of territorial statutes instead of state statutes. In other words, since Section 240 (b) of the Judicial Code gives a definite right to a review of any judgment of a Circuit Court of Appeals holding a state statute invalid, at the instance of the party relying on such statute, it would seem fair and logical for this Court to make a practice of ordinarily granting certiorari in like cases involving the validity of territorial statutes,—such as, in this case, this act of the Puerto Rican Legislature. This would seem to be especially true where the insular statute in question, as in the present case, constitutes an exercise of the taxing power of the insular Legislature, and the party seeking the review is the insular Government itself.

Your petitioner therefore respectfully urges that the questions presented are such as should be finally settled and determined by this Court, and that this petition be granted.

WILLIAM CATTRON RIGBY,
Colonel, Judge Advocate,
FRED W. LLEWELLYN,
Major, Judge Advocate,
Attorneys for Petitioner.

CHARLES E. WINTER,
Attorney General of Puerto Rico,
BLANTON WINSHIP,
The Judge Advocate General,
Of Counsel.

BRIEF IN SUPPORT OF PETITION

OPINIONS

The opinion of the United States District Court for Puerto Rico was delivered by District Judge Ira K. Wells and filed December 7, 1931. It is not yet officially reported, but appears on pages 75-76 of the Record.

The opinion of the Circuit Court of Appeals (Circuit Judges BINGHAM, WILSON and MORTON; opinion by Judge BINGHAM) was filed June 27, 1932, and appears on pages 93-106 of the Record. It is reported in 60 F. (2d) 10 (advance sheets).

JURISDICTION

The jurisdiction of this Court to issue the writ of certiorari is invoked under Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938. But the federal courts are without jurisdiction, except to remand to the insular courts. (Point I, *infra*, pp. 19-39).

QUESTIONS PRESENTED

These are stated in the *petition, supra*, pp. 2-4.

STATUTES INVOLVED

These are indicated in the petition, *supra*, pp. 4-7.

STATEMENT

A statement of the case is embodied in the petition, *supra*, pp. 7-13.

ERRORS TO BE RELIED UPON AND SUMMARY OF ARGUMENT

These are set forth under the headings of "Petitioner's Contentions" and "Reasons for Granting the Writ" in the foregoing petition, *supra*, pp. 13-17.

ARGUMENT

POINT I

UNDER THE LAWS OF PUERTO RICO A *SOCIEDAD EN COMANDITA*, SUCH AS THIS RESPONDENT, POSSESSES ALL OF THE LEGAL CHARACTERISTICS OF A CORPORATION AND IS IN PRINCIPLE AND SUBSTANCE A CORPORATION RATHER THAN A PARTNERSHIP. BETWEEN SUCH A *SOCIEDAD* AND A CORPORATION THERE IS NO SUBSTANTIAL DIFFERENCE OF LEGAL STATUS SUCH AS WOULD JUSTIFY A DISTINCTION BETWEEN THE TWO IN THE APPLICATION OF PROVISIONS OF THE FEDERAL CONSTITUTION AND STATUTES DEFINING THE JURISDICTION OF FEDERAL DISTRICT COURTS. THE RESPONDENT *SOCIEDAD*, BEING IN SUBSTANCE A CORPORATE BODY ORGANIZED UNDER AND OWING ITS EXISTENCE TO THE LAWS OF PUERTO RICO, IS A CITIZEN OF PUERTO RICO WITHIN THE MEANING OF THE JURISDICTIONAL STATUTES ABOVE MENTIONED, AND THERE WAS NO DIVERSITY OF CITIZENSHIP IN THIS CASE. THEREFORE, THE FEDERAL COURTS DID NOT ACQUIRE JURISDICTION THROUGH THE PETITION FOR REMOVAL, AND THIS CAUSE SHOULD BE REMANDED TO THE INSULAR COURT.

The respondent Russell & Co., Sucrs., S. en C., is a civil agricultural *sociedad en comandita* (the latter term being commonly but inaccurately translated "limited partnership"), organized under the laws of Puerto Rico (agreed Statement, par. 2, R. 66). As such it is accorded under the civil law in Puerto Rico complete juridic personality with power in its separate name and capacity to hold property and to make contracts and to sue and be sued. As such it possesses all of the essential legal characteristics of a corporation as corporations are commonly known within the United States proper.

Provisions of the insular codes bearing out the foregoing statement have been assembled and quoted from the original Spanish sources, together with English translations of each, in Appendix IV of this pamphlet, *infra*, pp. 78-90.

It will be observed that under those laws all of the artificial personalities created thereunder are called *"compañías"* or *"sociedades"*; that is, in English, "companies" or "associations" (*"societies"*). There is no precise parallel between the

various types of companies or associations authorized under the civil law of Puerto Rico, on the one hand, and the various artificial personalities recognized in the states, on the other.

However, upon examination of the civil laws above mentioned and a comparison between the characteristics of the *sociedad en comandita,* as therein disclosed, and those of the ordinary corporation as we find it in the United States proper, it will be seen that the *sociedad en comandita* possesses all of the essential characteristics of the corporation.

(a) The corporation is created under statutory authority by charter or articles of incorporation. The *sociedad en comandita* is created in a similar manner.

(b) The corporation endures for the period prescribed in its charter or articles of incorporation regardless of the death or withdrawal of individual members. This is true of the *sociedad en comandita* if so provided in its Articles.

(c) The affairs and transactions of the corporation are carried on by managers or agents designated originally in its articles and thereafter elected by its members. The affairs of the *sociedad en comandita* are similarly managed and carried on by managers (in Spanish, *gestores*) similarly chosen.

(d) The corporation is an artificial person with complete and separate juridic status. So is the *sociedad en comandita.*

(e) The stockholders of a corporation have no liability, or only a contingent and limited liability for the acts and debts of the corporation. This is true also of the members of the *sociedad en comandita* with relation to its acts and debts.

(f) The corporation acts, contracts, transacts business, sues and is sued in its corporate name. Likewise the *sociedad en comandita.*

In short, there is nothing in the way of a substantial or distinctive characteristic of the corporation which is not possessed by the *sociedad en comandita.*

Altnough the designation *sociedad en comandita* has come habitually to be translated into English as "limited partner-

ship," the entity thus designated is in truth nothing more nor less then a form of the familiar corporation of American jurisprudence.

The Supreme Court of Puerto Rico has expressly held that the respondent Russell & Co., S. en C. is a juridic entity distinct from its component members, and that the latter have no legal standing as petitioners for removal to the federal court of an action initiated against the *sociedad* in an insular district court. That case presents so clearly the viewpoint of the Puerto Rican court of last resort concerning the juridical character and status of the *sociedad* that we have ventured to quote from the opinion at considerable length, as follows:

> It is conceded by the attorney for the removal petitioners, who came into this court under protest, that in order that a case may be removed a clear diversity of citizenship between the contending parties must be shown and that the case must be one of which the United States Court could have taken jurisdiction originally if the complainant had elected to sue therein. Where all of the parties are natural persons the question is relatively simple, but it becomes complicated where artificial entities like corporations and partnerships are concerned.
>
> In the early cases in the Supreme Court of the United States the question of what was the citizenship of a corporation duly incorporated under the laws of a State was frequently made to depend on the question of the citizenship of the persons who composed the corporation, in other words, on a question of fact. However, as the conception of a corporation as a distinct entity became more or less fixed, the Supreme Court then decided that the citizenship of a corporation was irrebuttably presumed to be that of the State where it was incorporated. *St. Louis & San Francisco R.R. Co.* v. *James*, 161 U. S. 563; *Martinez* v. *Asociacion de Senoras*, 213 U. S. 20; 34 Cyc. 1261. A different question arises where a partnership is alleged to be one of the parties.
>
> *Chapman* v. *Barney*, 129 U. S. 677, was a relatively early case where it was decided that companies which were not corporations could not be citizens of the United States. In a great many cases this result naturally flowed

from the fact that the particular company or association had no legal personality distinct from the members who composed it. The same principle was, in the United States, held to apply to limited partnerships. *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U. S. 456, 457, and citations thereof, and especially *Ralya Market Co.* v. *Armour & Co.*, 102 Fed. 530; 34 Cyc. 1263. In most of the United States the theory that a partnership had no real personality distinct from the members that composed it was applied to limited partnerships.

Even in Iowa where a limited partnership has a distinct legal existence, yet the same doubt arose, probably more especially in this case by reason of the Iowa statute. That State permits suits against firms as an entity or against the individual partners. In *McLaughlin* v. *Hallowell*, 228 U. S. 284, a case from Iowa, after it had been decided that a case was not removable where the limited partnership was one of the parties, the members of the partnership attempted to remedy this condition by appearing personally, but the Supreme Court held that as one of the necessary parties to the suit could never have been sued in the Federal Court on the ground of diversity of citizenship (the partnership having none) the case was not removable. At least, that seems to be the necessary intendment of the opinion, although it was really decided on another jurisdictional point. See also *Ralya Market Co.* v. *Armour & Co.*, supra.

We may assume, then, that in the United States, outside of Louisiana or other States deriving their jurisprudence from the civil law, a limited partnership is never a citizen.

From the case before us one of two things is true, either that the *Sociedad en Comandita* is a limited partnership and hence has no citizenship, or else it is necessarily a citizen of Porto Rico, being incorporated here. Of course, if it has no citizenship, no question of diversity of citizenship could be raised; a proposition, we think, that would be conceded by counsel for the respondent. There can be no diversity of citizenship unless both parties are citizens.

That a *Sociedad en Comandita* has a distinct entity in Porto Rico is a proposition generally conceded. Some of our own cases say so. *Cintron* v. *Colorado*, 22 P.R.R. 541; *Quintana* v. *Ramirez & Co.*,

22 P.R.R. 707. See also Sanchez Roman, 2d. Edicion, volume 11, page 144. To say that an entity organized under the laws of Porto Rico has citizenship distinct from the body politic or territory that organized it would be a startling statement. If Porto Rico has any citizenship, a corporation organized under its laws must necessarily have the same citizenship, and the same would be true of a limited partnership, if that partnership has any citizenship at all. We need not therefore even decide in this case whether a *sociedad en comandita* is or is not a citizen.

The principal contention of the respondent, however, is and must be that the matter of citizenship in this case is to be determined by the partners who form the *Sociedad en Comandita*—several of them the managing partners and several more the contributing partners. We apprehend that this theory is based upon the law in most jurisdictions of the United States that a partnership has no legal existence independently of its members. This is certainly not true in Porto Rico. This court has recently decided that in certain contingencies partners may be joined in a suit against a partnership [5] (*Successors of M. Lamadrid & Co.* v. *Martorell*, 28 P.R.R. 824), but that was a far cry from saying that the partnership was composed of or dependent for its legal existence upon the individual status of its members. **We think that the five or six individual members who form this *Sociedad en Comandita* would be the first to disclaim that they were collectively and individually responsible for all the acts of the *Sociedad en Comandita*. We hold, however, that a *sociedad en comandita* is an entity distinct from the members that compose it.**

In order that a suit may be removed on the ground of the diversity of citizenship there must be, as the word "suit" implies, parties to it, and **it is only the parties to a suit who can petition for removal. The person or entity sued in this case was Russell & Co.**

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[5] This was a *sociedad colectiva*, resembling the common law general partnership.

It was the essential and only party defendant to the suit. Any existing obligation was between The People of Porto Rico and Russell & Co. and these individual members can not change the nature of the obligation by asking to be made parties. It is admitted in the pleadings that Russell & Co. is a *sociedad en comandita*. The defendant here then has no citizenship distinct from The People of Porto Rico or it has no citizenship at all.

People v. *Rivera Zayas, District Judge*, 29 P. R. 423, 428-431.

Although it is not expressly stated anywhere in the opinion last above cited that the *sociedad en comandita* is really a corporation, and although the official English translation thereof, above quoted, represents the Court as having referred to the *sociedad* as a limited partnership, nevertheless it will be noted that the opinion is very emphatic in its declarations that the *sociedad* possesses, under the civil laws of Puerto Rico, complete juridical personality, entirely separate and apart from its individual members.

It should be kept in mind also that the question of the legal character and status of the *sociedad* under the laws of Puerto Rico, *is one of local law*, concerning which the views of the local court of last resort, although of course not binding on this Court, should nevertheless be accorded great weight, and should be left undisturbed unless clearly erroneous.

In *Louisville Railroad Company* v. *Letson*, 2 How. 497 (hereinafter in this petition and the supporting brief for convenience called the *Letson* case), this Court, modifying prior holdings on the subject, adopted the rule, *ever since followed* (*St. Louis and San Francisco Ry. Co.* v. *James*, 161 U. S. 545, 555), that, for federal jurisdictional purposes, the members of a corporation are conclusively presumed to be citizens of the state under whose laws the corporation was created. That rule was definitely predicated upon the distinctive characteristics of the corporation. It was adopted, the Court explained in substance, because the corporation is an artificial person,

created by law, with complete and separate juridical status, with the characteristics of immortality and individuality, and because it is capable of residing in or inhabiting the state under whose laws it was created, and of being treated as a citizen of that state for purposes of federal jurisdiction.

Closing its discussion of this point in the *Letson* case, this Court said (p. 558):

> We confess our inability to reconcile these qualities of a corporation—residence, habitancy, and individuality, with the doctrine that a corporation aggregate cannot be a citizen for the purposes of a suit in the courts of the United States, unless in consequence of a residence of all the corporators being of the state in which the suit is brought. When the corporation exercises its powers in the state which chartered it, that is its residence, and such an averment is sufficient to give the Circuit Courts jurisdiction.

That reasoning applies as fully to the civil law *sociedad en comandita* of Puerto Rico as to the common law private corporation. The *sociedad en comandita* is also an artificial person, created by law, with complete and separate juridical status, with the qualities of immortality or perpetual succession, capable of inhabiting or residing in the territory under whose laws it is created, capable in its own separate name of acting, contracting, doing business, suing and being sued, and thus capable, to exactly the same extent as a corporation, of being treated as a citizen of that territory for federal jurisdictional purposes. Exactly like the stockholders of a corporation, the individual members of the *sociedad en comandita* are either completely exempted from any liability for the acts and debts of the *sociedad*, or have only such strictly limited and subsidiary liability therefor as exists on the part of the stockholders of some classes of corporations. In short, there is no substantial difference, except in name, between a corporation and a *sociedad en comandita*. The latter is merely one kind of corporation. See Appendix IV, *infra*, pp. 78-90.

We have not overlooked *Great Southern Fire Proof Hotel*

Co. v. *Jones*, 177 U. S. 449, wherein this Court declined to extend the rule of the *Letson* case to limited partnerships, nor have we failed to consider the opinion of the United States Circuit Court of Appeals for the First Circuit in *People of Puerto Rico* v. *Fortuna Estates*, 279 Fed. 500, holding (p. 505) "that, where the jurisdiction of a federal court over a suit brought against a partnership depends upon diversity of citizenship, the question is to be determined by the citizenship of its members, whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name," and the refusal of this Court, presumably on other grounds,[6] to grant a petition for certiorari in that case (259 U. S. 587).

Our position here is simply that in previous cases involving this question in connection with the *sociedad en comandita*, the courts concerned, except perhaps the Supreme Court of Puerto Rico, have invariably been misled by the error commonly committed in the translation of the Spanish term *sociedad en comandita;* have failed to recognize the fact that the entity thereby designated is to all intents and purposes actually a corporation as above pointed out; and, treating the *sociedad* simply as a limited partnership, have erroneously applied the rule established by this Court in the *Great Southern Fire Proof Hotel Co.* case; whereas the *sociedad en comandita* is really a corporation, and the proper analogy is found in the *Letson* case and the *St. Louis & San Francisco Ry. Co.* case, *supra.*

In its opinion in this case, the Circuit Court of Appeals, as the basis for its holding that the motion to remand was properly denied by the District Court, refers to its own prior

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[6] The Circuit Court of Appeals had held in that case that, on other grounds, the federal court had jurisdiction, viz., that suit had originally been begun against a *New York corporation*, and the subsequent addition of the *sociedad* as an additional defendant, did not oust the jurisdiction, whatever the status of the *sociedad* (279 Fed. at pp. 501, 504).

holdings in *People of Puerto Rico* v. *Fortuna Estates*, above mentioned, and in *Goico* v. *Russell & Co.*, 4 F. (2d) 7, and to the fact that in its opinion in the *Fortuna Estates* case attention was called to the following authorities: *Chapman* v. *Barney*, 129 U. S. 677, 682; *Great Southern Fire Proof Hotel Co.* v. *Jones*, *supra*; *McLauglin Bros.* v. *Hallowell*, 228 U. S. 278; *Bruett & Co.* v. *Austin Drainage Excavator Co.*, 174 Fed. 668; *Columbia Digger Co.* v. *Rector*, 215 Fed. 618; and *Empire Rice Mill Co.* v. *Neumond*, 199 Fed. 800. (R. 98).

But there is not a word in the opinions of the Circuit Court of Appeals in the *Fortuna Estates* case, *supra*, in the *Goico* case, *supra*, or in the present case, to indicate that that Court in any of these cases realized the true nature and legal status of the *sociedad en comadita* as having, not merely some, but all of the substantial characteristics of the private corporation. On the contrary, it is clearly apparent that that Court, in dealing with the *sociedad en comandita* in those cases, regarded that entity as simply a partnership, with perhaps the single corporate capacity of suing and being sued in its corporate name. That such was the understanding of that Court is evidenced, not only by the absence of any reference in those opinions to the complete parallel between the characteristics of the *sociedad en comandita* and those of the private corporation, and the Court's frequent references to the *sociedad en comandita* simply as a "partnership," but even more clearly by the cases cited in the opinion in the *Fortuna Estates* case, *supra*. For, as we shall now proceed to show by brief analyses of those cases, they dealt in every instance either with an ordinary general partnership or else with a limited partnership which was in fact, or was regarded by the Court as, lacking in some of the essential characteristics of a corporation.

Chapman v. *Barney*, 129 U. S. 677. In that case this Court held simply that an allegation that the plaintiff was a "joint stock company" organized under the laws of New York, did not amount to an allegation that the plaintiff was a cor-

poration, but did in effect amount to an allegation that the plaintiff was a "mere partnership"; and, since a mere partnership could not be a citizen, this Court held that that allegation was insufficient to give a federal court jurisdiction of an action between the plaintiff and a citizen of another State by reason of diversity of citizenship. It we are correct in our view that a *sociedad en comandita*, organized under the laws of Puerto Rico, possesses all of the essential characteristics of a corporation, and is in fact a kind of corporation, that case is clearly not in point here, for in that event the defendant here is not a "mere partnership."

Great Southern Fire Proof Hotel Co. v. *Jones*, 177 U. S. 449, hereinafter for convenience called simply the *Hotel Company* case. As has been previously noted, it was in that case that this Court, in 1900, first definitely declared that the rule of the *Letson* case, *supra*, would not be extended to embrace partnership associations. The action had been commenced in a United States Circuit Court in Ohio by "Benjamin F. Jones, George M. Laughlin, Henry A. Laughlin, Jr., Benjamin F. Jones, Jr., doing business under the firm name and style of Jones & Laughlin, Limited", by complaint alleging the plaintiff partnership to have been organized under the Pennsylvania Act of June 2, 1874 (P. L. 1874, pp. 271 *et seq.*; 2 Purdon's Digest, 13th Ed., pp. 2023 *et seq.*), and to be "a citizen of the State of Pennsylvania." The defendants were an Ohio corporation and several Ohio partnerships, and the sole possible ground for federal jurisdiction was diversity of citizenship. Demurrers to the complaint were sustained, and the complaint was dismissed, by the Circuit Court. On appeal, the United States Circuit Court of Appeals for that Circuit reversed the Circuit Court. The case then came before this Court on certiorari obtained by the hotel company.

Thus far the question of jurisdiction had not arisen, and that question was not discussed in the original briefs filed in this Court. It was first raised by members of this Court during the oral argument, March 21 and 22, 1900. Two days later, on March 24, 1900, counsel for the respondents filed

with the Clerk of this Court "supplemental memoranda" of two or three typewritten pages, arguing very briefly that the allegations of the complaint were sufficient to establish jurisdiction, and requesting, in the event this Court should decide otherwise, that the case be remanded to the Circuit Court with leave to amend the complaint. For the convenience of the Court in its consideration of the present case, and to show the inadequacy of the presentation of the jurisdictional question in that case, we have appended a copy of that memorandum (Appendix V, *infra*, pp. 91-93).

On April 9, 1900, this Court, without considering the merits of the case, rendered its opinion, delivered by Mr. Justice HARLAN, reversing the judgments of both lower courts upon the jurisdictional ground alone, and remanding the case with leave to amend the complaint upon the subject of citizenship.

From the opinion of this Court, and the "supplemental memoranda" filed by the respondents, it seems clear that the attention of the Court was not drawn to the specific provisions of the Pensylvania Act of June 2, 1874, under which the plaintiff partnership had been organized, or to the fact that the so-called "limited partnership associations" therein authorized were invested by that act with every essential characteristic of a private corporation. So far as the jurisdictional question there involved was concerned, this was the very fact of most vital importance.

In its opinion in that case, after referring to certain opinions of the Pennsylvania Supreme Court concerning limited partnership associations organized under the laws of that State, namely; (1) *Coal Co.* v. *Rogers*, 108 Penn. St. 147, 150, declaring that "such an association is not technically a corporation, yet it has many of the characteristics of one," and that "it may not be improper to call such an association a *quasi* corporation"; (2) *Hill* v. *Stetler*, 127 Penn. St. 145 (17 Atl. 887), saying that the Pennsylvania Act of June 2, 1874, provided for the creation of "a new artificial person to be called

a joint-stock association, having some of the characteristics of a partnership and some of a corporation"; and (3) *Carter* v. *Producers' Oil Co., Ltd.*, 182 Penn. St. 551, 573, 574 (38 Atl. 571, 572), declining to regard a limited partnership association organized under the Pennsylvania Act above mentioned as a corporation, and holding it to be only a partnership association, although conceding that it has some of the qualities of a corporation, this Court said (177 U. S. 457):

> "That a limited partnership association created under the Pennsylvania statute may be described as a '*quasi* corporation,' having some of the characteristics of a corporation, or as a 'new artificial person,' is not a sufficient reason for regarding it as a corporation within the jurisdictional rules heretofore adverted to. That rule must not be extended. We are unwilling to extend it so as to embrace partnership associations."

From the foregoing it is apparent that, in the *Hotel Company* case, the holding of this Court was that a Pennsylvania limited partnership could not be regarded as equivalent to a corporation, and therefore could not be regarded as a citizen of that State, for federal jurisdictional purposes; and it is further apparent that such holding was based very largely, if not wholly, upon the fragmentary remarks of the Pennsylvania Supreme Court above quoted, from which this Court seems to have concluded that such partnerships had only a part, and not all, of the characteristics of a corporation. Apparently this Court did not during its consideration of that case closely examine the Pennsylvania statute above mentioned to determine for itself independently the legal characteristics of the partnership associations created thereunder, or whether those characteristics included all of those which, in the case of corporations, constituted the ground upon which this Court had adopted the rule announced in the *Letson case;* but, in view of the very inadequate—and even acquiescent—presentation of the question in the "supplemental memoranda" for the respondents there (Appendix V, *infra*, pp. 91-93), this

Court was led to accept the comments of the Pennsylvania court quoted in its opinion as decisive of those questions.

Examination of the opinions in which those comments appear will disclose that in not one of them was the question at issue whether Pennsylvania partnership associations possessed all, or only part, of the characteristics of a corporation.

One of those cases was *Coal Co.* v. *Rogers, supra,* 108 Penn. St. 147, 150, which was an action for trespass against a Pennsylvania limited partnership organized under the act of 1874. The treble damages trespass statute of Pennsylvania was applicable only to "any person or corporation," and the question involved in that case was whether the defendant came within the application of those terms as employed in that statute. The state court in effect held the partnership to be an "artificial person" and therefore within the statute. The Court had no occasion in that case to decide, and did not decide, whether such an association possessed all or only part of the characteristics of a corporation, and its remarks in that connection, quoted by this Court in the *Hotel Company* case, were obviously never intended by their authors, or that Court, as a holding that such an association did not possess all of the legal characteristics of a corporation.

Another of the cases cited by this Court in the *Hotel Company* case was *Hill* v. *Stetler, supra,* 127 Penn. St. 145, 17 Atl. 887. In that case the question before the state court was whether an alleged limited partnership, by reason of irregularities in its organization, was in reality only a general partnership, so as to render its members individually liable as general partners for the partnership debts. The Court's remark in that case to the effect that the joint-stock associations created under the Pennsylvania Act of 1874, *supra,* had "some of the characteristics of a partnership and some of a corporation," occurs in the first part of the opinion, prior to the discussion of the merits, and was apparently intended as merely introductory or generally descriptive, and was, so far as any issue in that case was concerned, pure *dictum.* There is nothing in that case to indicate that

the state court there had any occasion to, or that it did, carefully consider whether the so-called joint-stock companies or limited partnerships there under consideration possessed all, or only a part, of the legal characteristics of corporations.

The other Pennsylvania case cited in the opinion of this Court in the *Hotel Company* case is *Carter* v. *Producers' Oil* Co., Ltd., *supra,* 182 Penn. St. 551, 38 Atl. 571. As clearly appears from the discussion in the opinion of this Court in the *Hotel Company* case (177 U. S. 457), the question before the Pennsylvania Supreme Court in the *Carter* case was simply whether the limited partnership associations of that State, organized under the act above mentioned, were actually corporations within the meaning of the corporation laws of that State, so that those associations could adopt only such by-laws, rules and regulations as it was within the power of a corporation to prescribe. The state court held they were not, but that decision did not involve a holding that those associations did not possess all of the essential corporate characteristics in consideration whereof this Court adopted its jurisdictional rule announced in the *Letson* case, *supra.*

Thus it appears that this Court, in the *Hotel Company* case, under the disadvantages of an inadequate presentation by counsel of the jurisdictional question there involved, influenced by incidental and fragmentary remarks, largely *obiter dicta,* quoted from three prior opinions of the Pennsylvania Supreme Court, and apparently without an independent examination of the Pennsylvania statutes on the subject, concluded that the so-called limited partnership associations of that State did not have all of those characteristics necessary to constitute them "citizens" of Pennsylvania for federal jurisdictional purposes, within the principle of the *Letson* case. That conclusion was clearly erroneous. Examination of the Pennsylvania Act of June 2, 1874, *supra,* will prove that the limited partnership associations thereby authorized, do really possess every one of those corporate characteristics considered by this Court as the basis for the

rule laid down in the *Letson* case. Those characteristics are (2 How. 557, 558):

(1) Complete juridical personality, that is, existence as a distinct and separate artificial person, created and organized by authority of law, with legal capacity in its own name to act, contract, transact business, sue and be sued; and "for the purposes of its incorporation, capable of being treated as a citizen";

(2) Possession of "only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence," including "immortality" and "individuality," enabling it to "manage its own affairs, to hold property without the perplexing intricacies, the hazards and the endless necessity of perpetual conveyances";

(3) Legal capacity to act and be treated as an inhabitant or resident of the state or territory under whose laws it is organized, and where it exercises its powers; and, doubtless also, although it is not expressly so indicated in the *Letson* case;

(4) Legal capacity to contract indebtedness without imposing any liability, or only a contingent or limited liability, as may be provided by law, upon its individual members.

All of those characteristics, as well as other distinctive characteristics, of corporations were expressly conferred by the Pennsylvania Act of 1874, *supra*, upon the so-called "joint-stock companies," or "limited partnership associations," whose creation was thereby authorized. The whole act so closely parallels the various statutes of states and territories governing the creation and organization of private corporations, as to leave absolutely no substantial or real difference in characteristics between the Pennsylvania so-called "limited partnership association" with which this Court was dealing in the *Hotel Company* case, and the private corporation which was held by this Court in the *Letson* case to be entitled to recognition, for jurisdictional purposes, as a citizen of the state of its organization. Had that fact been clearly brought out and

presented by counsel in the *Hotel Company* case, we are confident that this Court would have there applied the rule of the *Letson* case, and would have held the so-called "limited partnership association" there involved to be a citizen of Pennsylvania for federal jurisdictional purposes.

In other words, when this Court, in the *Hotel Company* case, referring to the rule of the *Letson* case, declared in substance that it must not and would not be extended to partnership associations, we are sure it did so because of a misapprehension that the Pennsylvania "limited partnership association" there involved had only some, but not all, of the essential corporate characteristics mentioned in the *Letson* case; whereas the fact really was that it had them all. The only tangible difference between the two entities, that is, between the ordinary private corporation and the Pennsylvania so-called "limited partnership association," as far as present questions are concerned, was the difference in the generic names by which they were designated in their respective organic statutes. The so-called "limited partnership association," like the corporation, was an artificial person, created by law, and by law invested with complete juridic personality, capable in its own name, independently of its members, of acting, contracting, doing business, suing and being sued. Like the corporation it functioned through directors, managers or agents, originally designated in its organic document, and thereafter elected by its members. Like corporation stockholders, its members were held to no individual liability, or only a limited and contingent liability, for acts or debts of the organization, and could influence the actions of the organization only through exercise of their right to vote in the selection of its managing officers or agents. In short, the so-called "limited partnership association" was really a corporate body, identical in all substantial characteristics with the corporation, and different only in the minor particular of generic statutory name.

Had this fact been clearly presented to and understood

by this Court in the *Hotel Company* case, is it conceivable that this Court would have adopted the view it there took, and declined to apply in that case the rule of the *Letson* case, upon the sole ground that the Pennsylvania "limited partnership association" although invested with every essential corporate characteristic, was not expressly labeled "corporation" in its organic statute? When this Court there said "we are unwilling to extend it" (the *Letson* case rule) "so as to embrace partnership associations," was that language intended, or should it now be construed, to refer to corporate entities called "limited partnership associations," but in reality legally invested with every essential characteristic of corporations?

Those questions answer themselves in the negative. There is no logical ground upon which affirmative answers thereto could be supported. Affirmative answers would, in effect, make the opinion in the *Hotel Company* case say that a corporation, because it possesses complete juridical personality, is for federal jurisdictional purposes a citizen of the state of its organization; but so-called limited partnership associations, even when invested by law with the same characteristics as corporations including complete juridical personality, are not such citizens. We cannot believe that this Court ever intended to say any such thing—to rest so important and vital a distinction upon a mere difference of statutory designation. This Court does not allow mere matters of form to control its decisions, or, in its reasoning, permit the substance of things to give way to their shadows. It does not recognize a distinction where there is no real difference.

Proceeding with our analyses of the authorities cited by the Circuit Court of Appeals in its opinions in this case and the *Fortuna Estates* case, *supra*, we note next the case of *McLaughlin* v. *Hallowell*, 228 U. S. 278. The jurisdictional question in that case arose with relation to an ordinary general partnership of the State of Iowa. The State law expressly provided (Iowa Code, 1897, sec. 3468) that "Actions may be brought by or against a partnership as such, or against all or

either of the individual members thereof." The suit had been commenced in a state district court against the partnership alone. Upon petition of the individual partners it had been removed to a United States District Court, but the latter had remanded it to the state court. When the case came to this Court on writ of error to the Iowa Supreme Court, all that this Court did with relation to that particular question was to follow its own prior holdings that an order of remand was not reviewable here. The case had absolutely no bearing on the question before the Circuit Court of Appeals in the *Fortuna Estates* case, now raised again in the present case, because this question relates to the *sociedad en comandita*, an artificial personality with all of the essential characteristics of a corporation.

Bruett & Co. v. *Austin Drainage Excavator Co.*, 174 Fed. 668. In that case a United States District Court in Iowa held that an action begun in a state court by an Iowa partnership against an Illinois corporation was removable on the petition of the defendant alleging the members of the partnership to be citizens of Iowa. The case is not in point here, and was not in point where it was cited by the Circuit Court of Appeals in the *Fortuna Estates* case, *supra*, because the partnership plaintiff in that case was an ordinary general partnership, possessing as its sole corporate characteristic merely the capacity to sue and be sued under its partnership name. The statute also authorized the individual partners to be joined in actions by or against the partnership and the District Court very properly held in substance that, notwithstanding the Iowa statute allowing the partnership to sue and be sued in its partnership name, the individuals composing the partnership continued to be real parties in interest, and their citizenship was therefore the determining factor in questions of federal jurisdiction. As we have clearly shown, the Puerto Rican *sociedad en comandita* possesses not merely one, but all, of the characteristics of a corporation, and its members are no more proper parties to actions by or against the *sociedad* than

are the stockholders of a corporation in actions by or against the corporation.

In *Columbia Digger Co.* v. *Rector*, 215 Fed. 618, again we find that the partnership defendant concerning which the question of federal jurisdiction arose was an ordinary general partnership, apparently without a single one of the essential characteristics of a corporation. The United States District Court, in that case, rightly held its jurisdiction to be dependent upon affirmative showing of the citizenship of the individual members of the partnership, as long as the partnership continued to be a party to the action. For the reasons already pointed out in our discussion of other cases involving general partnerships, the case is not in point here, where the question arises in connection with the *sociedad en comandita*, a very different entity.

In *Empire Rice Mill Co.* v. *Neumond*, 199 Fed. 800, the action had been commenced in the United States District Court for the Eastern District of Louisiana, by a Louisiana corporation as plaintiff, against a commercial partnership consisting of two members, both of the latter being citizens of Germany. It was a suit on contract for a money judgment, and the prayer was for judgment *in solido* against the firm and its members individually. The Court, although conceding that a partnership in Louisiana was considered a legal entity, pointed out that, except in one early decision not regarded as persuasive, such a partnership had never been considered a corporation, or even a *quasi* corporation, and further that under the Louisiana law the partners could be joined in a suit by or against the partnership, and "judgment rendered against the firm and the partners *in solido*" (p. 803). **This is not true of the Puerto Rican *sociedad en comandita*, with which we are concerned in the present case,** for the Supreme Court of Puerto Rico has ruled in effect that the individual members of the *sociedad en comandita* have no standing as parties in actions by or against that entity. *People* v. *Rivera Zayas*, 29 P. R. 423, 431, *supra*, pp. 21-24.

This completes our analyses of the authorities cited by the Circuit Court of Appeals in its opinion in the *Fortuna Estates* case, *supra,* and again mentioned in its opinion in the present case (R. 98). As we stated at the outset of our discussion of these cases, it is clear that not one of them provides any authority whatever in support of the holding of that Court upon the jurisdictional question under discussion. In fact their citation tends to show that the Circuit Court of Appeals did not fully grasp the real question presented in that connection, which was not merely whether the rule in the *Letson* case could be applied to partnership associations or ordinary limited partnerships, but whether the Puerto Rican *sociedad en comandita* is not really for jurisdictional purposes a corporation. That Court, obviously without any careful examination of the legal characteristics of the *sociedad en comandita,* and apparently assuming that it was only the ordinary limited partnership association, invested with some, but not all, of the characteristics of a corporation, erroneously applied the partnership rule of the *Hotel Company* case, whereas, as we have shown, the actual facts call for the application of the corporation rule of the *Letson* case.

It is possible that respondent may argue that even if it should be held that there was no diversity of citizenship, nevertheless the trial court had jurisdiction of the case under Section 24 of the Judicial Code (*supra,* p. 5), because of the federal questions raised in the answer. Such an argument would be wholly untenable. No federal question was apparent on the face of the complaint (R. 87-91). The petition for removal set forth no ground for removal except alleged diversity of citizenship (R. 6-10), and even if that petition had set forth the federal questions subsequently disclosed by the answer, this would not have sufficed to give the federal court jurisdiction upon that ground. To invest the federal court with jurisdiction under existing laws on the ground that the action is one arising under the constitution or laws of the United States, it is vitally essential that the c*omplaint itself* show a federal question. No action or pleading of the defense can sup-

ply the lack of such showing. *Tennessee* v. *Bank of Commerce*, 152 U. S. 454, 458-464; *Chappell* v. *Waterworth*, 155 U. S. 102, 107-108; *Louisville & Nashville R.R.* v. *Mottley*, 211 U. S. 149, 152-154; *Great Northern Ry. Co.* v. *Alexander*, 246 U. S. 276, 280-282.

As suggested in the foregoing petition it will seem to the people of Puerto Rico generally a strange perversion of justice if this respondent *sociedad*, owning rich properties and carrying on extensive agricultural, industrial and commercial affairs in the Island of Puerto Rico, organized under and protected by its laws, in fact owing its very existence to those laws and possessing all of the essential characteristics of a corporation, is permitted completely to evade the jurisdiction of the insular courts whenever engaged in litigation with the government or with a citizen of Puerto Rico.

POINT II

BY ASSESSING THE LANDS IN QUESTION FOR A PRO RATA SHARE OF THE COSTS OF MAINTAINING AND OPERATING THE SYSTEM FROM WHICH THEY ARE IRRIGATED, ACT NO. 49 OF 1921 DOES NOT IMPAIR THE OBLIGATIONS OF THE CONTRACTS OF AUGUST 26, 1914, BECAUSE THE CONTRACTS CONTAIN NO PROVISION EXEMPTING THOSE LANDS FROM TAXATION, BECAUSE SUCH EXEMPTION CANNOT BE PRESUMED, AND BECAUSE IN THE ABSENCE OF SUCH EXEMPTION THE ACT IS CLEARLY WITHIN THE LEGISLATIVE POWERS OF THE INSULAR LEGISLATURE.

A.—The People of Puerto Rico has no quarrel with the general principles cited by the Circuit Court of Appeals on page 11 of its opinion (R. 103), namely that a state cannot impair the obligations of its own contracts, and that this rule constitutes a limitation upon the power of taxation as well as upon other powers. Your petitioner recognizes the soundness and force of those principles wherever they are applicable, and is more than willing that its actions under review in this case, as well as in all other connections, shall be judged according to the standard suggested in the opinion of this court in *Woodruff* v. *Trapnall*, 10 How. 190, 207; that

is, "to be characterized by a more scrupulous regard for justice and a higher morality than belong to the ordinary transactions of individuals."

The People of Puerto Rico cannot justly be charged with any selfish interest whatever in the result of this controversy. The assessments in question, if and when collected, will simply accrue to the special fund for the operation and maintenance of the irrigation district, and thus serve only to lower the assessments upon other lands now taxed for such operation and maintenance. The insular treasury can derive no direct benefit. It is mainly on behalf of the farmers of the Southern Coast Public Irrigation District, and in the hope of securing justice for them, that The People of Puerto Rico has sought by the act in question, and is seeking by this action, to compel the defendant *sociedad* to pay its fair and reasonable share of the cost of operating and maintaining the system.

The position of the insular Government with relation to the present point is that the tax imposed by Act No. 49 does not impair the obligations of the contracts of August 26, 1914, because the Government in those contracts did not agree not to tax the water rights therein granted to the predecessors in interest of the present defendant. Neither of the contracts contains any limitation whatever upon the power of taxation of the insular Government; nor does the Act of August 8, 1913, under which they were made. Even if the contracts had contained such an undertaking it would have been illegal and void, because wholly unauthorized by the enabling statute.

B.—Nor could such an undertaking by the Government be inferred or implied, because of the well settled principle that the taxing power of a government is never presumed to be relinquished, and continues to exist with relation to property or rights granted by the government unless the contrary intention is declared in clear and unambiguous terms. *Society for Savings* v. *Coite*, 6 Wall. 594, 606; *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, 35-46. And even in cases where a state has granted rights to private persons with ex-

press provision of exemption from future taxation, if the circumstances do not amount to a contract to that effect upon some valuable consideration, it has uniformly been held by this Court that the state has the right to terminate the exemption. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 192 U. S. 201, 206-213, and the cases therein cited.

It will hardly be contended that the original concessions granted by the Spanish Government to the predecessors in interest of the defendant *sociedad* were not subject to taxation by the insular Government. The contracts of August 26, 1914, constituted merely an agreement on the part of the Government that the holders of those concessions should receive from this irrigation system certain amounts of water agreed to be equivalent in value to those which they had been entitled to take under their concessions. *What was there in those contracts or in the circumstances under which they were made to justify any inference that the rights granted by the contracts were to be forever tax free? Why should the Government have given tax-exempt water rights in exchange for taxable water rights? Where was the consideration moving to the Government, or to the land owners of the irrigation district, sufficient to justify the perpetual release of the concession holders from any assessment whatever toward the cost of maintaining service from which they were to be supplied? There was none. The concession holders simply exchanged taxable rights under their original concessions for rights equally taxable under the contracts.*

Apparently the Circuit Court of Appeals, in its opinion concerning this phase of the controversy, was influenced to some degree by an assumption that the People of Puerto Rico would have been unable to go ahead with the operation of the South Coast Irrigation District at all, if they had not been able to agree with the concession holders on a surrender of the concessions in exchange for equivalent water from the system. But this is not a fair assumption from the record of this case. There is nothing to indicate that had the Govern-

ment so elected it could not have modified the Jacaguas part of the plan so as to permit enough water to continue in the course of the river to provide these concession holders with the full amounts allowed by their concessions, while using the remainder, supplemented by the waters drawn through the tunnel from the Toro Negro River, and perhaps other waters from other sources, for the desired development in that valley. The recitals in the contracts appear to indicate that the Government was prepared to do so: "is ready to deliver * * * the amount of water * * * but in order to facilitate * * * ." (R. 35, 51).

That court also stresses the fact that the so-called equivalent rights allowed the concession holders under the contracts called for only about 75 per centum of the aggregate number of acre feet allowed under the original concessions. But this difference was fully compensated by advantages realized by the concessionaires in the way of daily deliveries, at higher intakes, enhanced assurance of continuity, etc. In any event, it surely cannot logically be argued that the surrender of 25 per centum of the total annual volume of water allowed under their original concessions was a sufficient consideration moving from these concession holders to the Government for a perpetual exemption from taxation of the rights granted by the contracts; and there is no statement in the contracts (R. 33-48, 49-61) that it was so intended.

C.—In support of its holding that Act No. 49 impairs the obligations of the contracts of August 26, 1914, the Circuit Court of Appeals in its opinion (R. 103) quotes from *Murray* v. *Charleston*, 96 U. S. 432, to the effect that a state or municipality may not under the guise of levying taxes impair the obligation of a contract. In that case the City of Charleston, Virginia, in order to raise money for municipal purposes had issued and sold obligations bearing interest at 6 per centum per annum. Subsequently the city had levied a tax of 2 per centum on all real and personal property in the city, and the city authorities had attempted to collect this tax on

certain of the city obligations owned by a resident of Germany by deducting the amount of the tax from payments of interest due from the city to the holder of the obligations. *It was not the tax on the obligations which was held to be an impairment of the contract in that case, but it was the attempt by the city to collect that tax by means of a deduction thereof from interest payments that was held to constitute the impairment*; and this Court there said, among other things (p. 445):

> Is, then, property, which consists in the promise of a State, or of a municipality of a State, beyond the reach of taxation? We do not affirm that it is. A State may undoubtedly tax any of its creditors within its jurisdiction for the debt due to him, and regulate the amount of the tax by the rate of interest the debt bears, if its promise be left unchanged. A tax thus laid impairs no obligation assumed. It leaves the contract untouched. But until payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely, payment to him, without a violation of the Constitution. "The true rule of every case of property founded on contract with the government is this: It must first be reduced into possession, and then it will become subject, in common with other similar property, to the right of the government to raise contributions upon it."

In short, in the case last above mentioned, had the city fully complied with its contract by paying the full amount of the required interest, and had the owner of the municipal obligations in question been a resident of the city, the city might lawfully have proceeded against such owner, together with the other owners of real and personal property within the city, for the collection of the tax, and there would have been no impairment of the obligation of the contract in a constitutional sense. In the present case the insular Government is withholding nothing from the respondent *sociedad* to which it is entitled under the contracts in question. The respondent

sociedad and its predecessors in interest have been receiving all of the water called for by the contracts, and the insular Government is neither withholding nor proposing to withhold a single drop of it. The contracts here continue to be scrupulously fulfilled, and the Act of 1921 does not militate against such fulfillment. It must be obvious therefore that the case of *Murray* v. *Charleston* affords no basis whatever for a holding in this case that the Act here in question impairs the obligations of the 1914 contracts in a constitutional sense.

An interesting and authoritative discussion of some of the principles involved in this connection will be found in the case of *Metropolitan Street Ry. Co.* v. *New York*, 199 U. S. 1, *supra*. The street railway company under its charter was required to pay certain percentages of its gross receipts into the municipal treasury each year. Subsequently the Legislature of New York amended the state tax laws so as to make subject to general taxation all railway franchises, providing that where the companies were already paying a percentage of gross receipts, such payments should be deducted from their assessments. The railway company contested the validity of this statute upon the ground, among others, that it impaired the obligation of the contract embodied in its charter, by requiring the company to make payments in excess of those required by the charter. This Court affirmed a judgment of the Supreme Court of New York entered pursuant to the decision of the New York Court of Appeals (p. 5; and cf. 174 N. Y. 417) sustaining the validity of the statute upon the ground that the charter contained no clear and unequivocal exemption of the franchise from taxation, that the surrender of the taxing power is never to be presumed, and that therefore the increased tax involved no impairment of the charter contract. We quote from the opinion of this Court in that case as follows (199 U. S. at pp. 35-38):

> The main contention is that this tax legislation impairs the obligation of contracts. It must be borne in

mind that presumptively all property within the territorial limits of a State is subject to its taxing power. Whoever insists that any particular property is not so subject has the burden of proof and must make it entirely clear that, by contract or otherwise, the property is beyond its reach. In *Providence Bank* v. *Billings,* 4 Pet. 514, Mr. Chief Justice Marshall, in delivering the opinion of the court, said (p. 561):

"That the taxing power is of vital importance; that it is essential to the existence of government; are truths which it cannot be necessary to reaffirm. They are acknowledged and asserted by all. It would seem that the relinquishment of such a power is never to be assumed. We will not say that a State may not relinquish it; that a consideration sufficiently valuable to induce a partial release of it may not exist; but as the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear."

In *Vicksburg &c. R. R. Co.* v. *Dennis,* 116 U. S. 665, Mr. Justice Gray cited many authorities, quoting the different phraseology in which by the several writers of the opinions the same rule was announced. In *Wells* v. *Savannah,* 181 U. S. 531, the law was thus stated by Mr. Justice Peckham (p. 539):

"The payment of taxes on account of property otherwise liable to taxation can only be avoided by clear proof of a valid contract of exemption from such payment and the validity of such contract presupposes a good consideration therefor. If the property be in its nature taxable the contract exempting it from taxation must, as we have said, be clearly proved. It will not be inferred from facts which do not lead irresistibly and necessarily to the existence of the contract. The facts proved must show either a contract expressed in terms, or else it must be implied from facts which leave no room for doubt that such was the intention of the parties and that a valid consideration existed for the contract. If there be any doubt on these matters, the contract has not been proven and the exemption does not exist."

In *Chicago Theological Seminary* v. *Illinois,* 188 U. S. 662, the same Justice declared (p. 672):

"The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

See also *Erie Ry. Co.* v. *Pennsylvania,* 21 Wall. 492; *Wilmington & Weldon R. R. Co.* v. *Alsbrook,* 146 U. S. 279; *Ford* v. *Delta & Pine Land Co.,* 164 U. S. 662.

This rule is akin to, if not part of, the broad proposition, now universally accepted, that in grants from the public nothing passes by implication. As said by Mr. Chief Justice Taney, in *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420, 549:

"The inquiry, then, is, does the charter contain such a contract on the part of the State? Is there any such stipulation to be found in that instrument? It must be admitted on all hands that there is none; no words that even relate to another bridge, or to the diminution of their tolls, or to the line of travel. If a contract on that subject can be gathered from the charter, it must be by implication, and cannot be found in the words used. Can such an agreement be implied? The rule of construction before stated is an answer to the question. In charters of this description, no rights are taken from the public or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey. There are no words which import such a contract as the plaintiffs in error contend for, and none can be implied."

Applying these well-established rules to the several contracts, it will be perceived that there was no express relinquishment of the right of taxation. The plaintiff in error must rely upon some implication and not upon any direct stipulation. In each contract there was a grant of privileges, but the grant was specifically of privileges in respect to the construction, operation, and maintenance of a street railroad. These were all that in terms were granted. As consideration for this grant the grantees were to pay something, and such payment is nowhere said to be in lieu of or as an equivalent or substitute for taxes. All that can be extracted from the language used was a grant of privileges and a payment therefor. Other words must be written into the contract before there can be found any relinquishment of the power of taxation.

The Circuit Court of Appeals in its opinion of June 27, 1932, says (R. 103):

> It seems to us that this act amounts to saying that in the future Fortuna Estates' right to receive the water which The People of Porto Rico contracted to deliver to them in substitution for their old water rights and concessions shall be subject to their paying the taxes in question and impairs the obligation of The People of Porto Rico to furnish to Fortuna Estates water which the former agreed to deliver the latter.

But did The People of Puerto Rico agree to make that delivery forever tax free? If so, where is that agreement set forth? If not, where is the impairment?

The theory of the insular Government is that each of the plantations of the respondent *sociedad* supplied with water from the South Coast Irrigation System, is benefited specially by the maintenance and operation of that system, at least to the amount of its *pro rata* share of the annual cost of maintaining the service; that the fact that the contracts of 1914 specify the amounts of water these plantations are entitled to receive from the system, and the fact that the Government agreed to deliver those amounts in lieu of the amounts which the plantations were entitled to take from the river under the old concessions, does not alter the fact that the plantations are so benefited by the improvement; that the plantations are therefore properly chargeable, by special assessment, as provided in the Act, with their *pro rata* share of such maintenance cost.

Against this theory it has been urged in behalf of the respondent *sociedad* that the only benefits accruing to the plantations from the maintenance of the irrigation system are those expressly stipulated in the contracts, for which it is claimed full payment has already been made by the temporary and conditional surrender of rights under the original water concessions. But the Government regards the question whether the lands in question are specially benefited by the development and maintenance of the irrigation system, other-

wise than by the mere delivery of the amount of water stipulated in the contracts, as one for determination by the insular Legislature in its discretion, and one which that Legislature has in effect determined by the Act of 1921.

In other words, the insular Government regards the Act of 1921 as constituting in effect a declaration by the Legislature that the lands therein taxed are specially benefited by the operation and maintenance of the irrigation system, at least to the extent of the taxes levied thereon by that Act, and regards this determination as one which it was within the power of the Legislature to make, and one which the courts will not disturb, at least in the absence of some showing that it is arbitrary and oppressive.

The principles last above mentioned are clearly enunciated by this Court in the case of *Spencer* v. *Merchant*, 125 U. S. 345.

That case involved special assessments, amounting in the aggregate to about $100,000, for a street improvement in Kings County, New York. After the improvement had been completed, and the assessments had been levied upon abutting property, and while there still remained unpaid of these assessments about $40,000 upon various tracts, the whole proceeding was declared invalid by the courts as to those who had not paid. Thereafter the Legislature of New York passed an act directing the Board of Supervisors of Kings County to levy an assessment upon the lands abutting on said improvement which had escaped assessment by reason of the invalidity of the prior proceeding, to the exact amount of the aggregate balance remaining unpaid with interest. The land owners objected upon the ground, among others, that the second act amounted to an attempt to levy a special assessment without regard to the benefits to the lands assessed. The validity of the act was sustained by the New York Court of Appeals (100 N. Y. 585), and by this Court, which said (125 U. S. at pp. 352-353):

The substance of the former decisions, and the grounds of the judgment sought to be reviewed, can hardly be more compactly or forcibly stated than they have been by Judge Finch in delivering the opinion of the Court of Appeals, as follows:

"The act of 1881 determines absolutely and conclusively the amount of tax to be raised, and the property to be assessed and upon which it is to be apportioned. Each of these things was within the power of the legislature, whose action cannot be reviewed in the courts upon the ground that it acted unjustly or without appropriate and adequate reason. * * * The legislature may commit the ascertainment of the sum to be raised and of the benefited district to commissioners, but it is not bound to do so, and may settle both questions for itself; and when it does so, its action is necessarily conclusive and beyond review. Here an improvement has been ordered and made, the expense of which might justly have been imposed upon adjacent property benefited by the change. By the Act of 1881, the legislature imposes the unpaid portion of the cost and expense, with the interest thereon, upon that portion of the property benefited which has thus far borne none of the burden. In so doing, it necessarily determines two things, viz., the amount to be realized, and the property specially benefited by the expenditure of that amount. The lands might have been benefited by the improvement, and so the legislative determination that they were, and to what amount or proportion of the cost, even if it may have been mistakenly unjust, is not open to our review. The question of special benefit and the property to which it extends is of necessity a question of fact, and when the legislature determines it in a case within its general power, its decision must of course be final. We can see in the determination reached possible sources of error and perhaps even of injustice, but we are not at liberty to say that the tax on the property covered by the law of 1881 was imposed without reference to special benefits. The legislature practically determined that the lands described in that act were peculiarly benefited by the improvement to a certain specified amount which constituted a just proportion of the whole cost and expense, and while it may be that the process by which the result was reached was not the best obtain-

able, and some other might have been more accurate and just, we cannot for that reason question an enactment within the general legislative power."

See also *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 174-178; the latter case citing with approval and following *Spencer* v. *Merchant*, *supra*.

POINT III

IN PROVIDING THAT THE AGGREGATE AMOUNT OF THE ANNUAL LEVY SHALL BE BASED IN PART UPON AN ESTIMATE BY THE COMMISSIONER OF THE INTERIOR OF THE AMOUNT REQUIRED TO DEFRAY THE COST OF OPERATION AND MAINTENANCE OF THE IRRIGATION SYSTEM DURING THE FOLLOWING FISCAL YEAR, ACT NO. 49 DOES NOT DELEGATE LEGISLATIVE POWER TO ADMINISTRATIVE OFFICIALS.

A.—Here again the appellant has no fault to find with the general principles advanced by the Circuit Court of Appeals as the ground for its opinion that the Act delegates legislative power to administrative officials. There is no doubt whatever that the power of taxation is a legislative power which cannot be delegated to administrative or executive officials. It is true also that in a general sense the fixing of the amount of a tax levy is part of the legislative functions involved in the process of taxation. But the fixing of the amount of the levy according to this principle does not necessarily nor usually imply the precise determination and specification of the exact sum to be raised. *The condition is met if the law sufficiently indicates the rules and data to govern determination of the exact amount so as to leave to executive officials substantially nothing more than the finding of facts and the making of mathematical computations.* This, we think, is all that is done by Act No. 49 of 1921, if the Act is properly interpreted according to its purpose and intent.

When Act No. 49 was enacted in 1921, the irrigation system to which it refers had been in existence and operating for more than six years. At that time it was and ever since has been a well-defined entity whose nature, extent, organization,

operating crew and condition were and are firmly established and well known. The function of determining annually in advance the approximate reasonable and necessary cost of maintaining and operating the system for each succeeding fiscal year was and is, therefore, mainly administrative, involving no legislative discretion, but merely the ascertainment of the facts of previous experience and existing conditions, itemized computations of the amounts and costs of labor and material needed for the following year, and the final summing up of items to find the approximate aggregate amount needed. It seems obvious that the Legislature could not reasonably be expected to concern itself with detailed minutiae to the extent necessary to formulate the required estimate for each year, and that when it turned the detailed computations over to the Commissioner of the Interior in the manner provided by the Act it adopted a very reasonable and proper solution of the problem, and one which is in harmony with the almost universal practice throughout the United States in dealing with similar problems.

It must be noted in this connection that the Legislature provided in the same enactment a more or less automatic check against the possibility of excessive levies by prescribing that any surplus realized in the experience of the preceding year must be deducted in computing the levy for the following year. It should also be noted that the Act in effect forbids inclusion in the estimate of any expense for new construction, by providing that the estimate shall include only "expense of maintaining and operating." Interpreted according to the rules of statutory construction the words last quoted must be taken to mean only the expenses of maintenance and operation that are necessary and reasonable.

These are all general limitations upon the authority delegated by the Act to the insular Treasurer and the Commissioner of the Interior. Their joint effect is to leave to those officials very little, if anything, more than the mere finding of facts and mathematical computations. In the required esti-

mate, to which objection has been made, the Commissioner of the Interior can include only necessary and reasonable items of cost of maintaining and operating an existing plant. If these limitations are exceeded the taxpayer can assert his rights and obtain correction of the assessment by appeal to the insular Board of Review and Equalization under Sections 308 and 310 of the insular Political Code (Compilation of the Revised Statutes and Codes of Puerto Rico in force on March 9, 1911, Sections 2960 and 2962).

B.—The authorities cited by the Circuit Court of Appeals in its opinion (R. 105) with relation to this phase of the case, all pertain to the principles governing general taxation. Special assessments, although imposed under the taxing power of the Government, are governed by principles different in various particulars from those which affect general taxation. *Cooley on Taxation*, 4th Ed., Vol. 1, Sec. 31. In the case of a general tax it is usually practicable for the legislative authority to fix precisely either the aggregate amount to be raised by the tax and thus indirectly the rate of taxation, or to fix directly the rate of taxation, thus indirectly establishing the aggregate amount to be levied. In the case of special assessments for local improvements directed by statute or ordinance, it is rarely practicable to determine precisely in the statute or ordinance directing the improvement and authorizing the levy the precise amount to be raised or the rate of apportionment. In such cases the almost universal practice throughout the United States has always been to delegate the function of fixing these exact figures to commissions, boards and administrative officials.

Taxation by Assessment, Page and Jones, Vol. 1, Sec. 267, and cases cited.
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112, 151, *et seq.*
Lombard v. *West Chicago Park Com.*, 181 U. S. 33.
French v. *Barber Asphalt Paving Co.*, 181 U. S. 324.
Wagner v. *Baltimore*, 239 U. S. 207, 211, *et seq.*

Milheim v. *Moffat Tunnel Dist.*, 262 U. S. 710.
Kansas City Ry. v. *Road District*, 266 U. S. 379.

Each of the cases last above cited involves a statute or ordinance providing for special assessments for the cost of local improvements where the precise amount to be levied was left for determination by administrative action under general limitations. In each of those cases the validity of the statute or ordinance in question was sustained, and, although it does not appear that in any of them the statute or ordinance was attacked on the specific ground that it delegated legislative authority to administrative officials, the absence of any such attack or even discussion of such a question in the opinions in those cases tends strongly to support the conclusion that the statutes and ordinances there involved were not regarded either by the attacking parties, or by the courts, as subject to objection on the ground of improper delegation of legislative authority.

The list of authorities last above cited might be extended almost indefinitely by taking cases decided by the courts of last resort in the various states. The practice is so well settled and of such long standing that we do not deem it necessary in this brief to extend the discussion on this point beyond what has already been said, further than to note the attitude of one of the state appellate courts, as disclosed in the cases next mentioned.

In *Mayor, etc., of Baltimore* v. *State*, 15 Md. 376, 74 Am. Dec. 572, the Supreme Court of Maryland was called upon to decide the validity of an act of that State conferring upon a board of police commissioners authority to estimate what sum of money would be necessary to enable them to discharge the duties imposed upon them, and obliging the mayor and city council to raise, by assessment and levy upon assessable property of the city, the sum thus estimated by the board. It was urged that this statute constituted an improper delegation of legislative authority, but the court up-

held the validity of the statute against this attack and said (15 Md. at pp. 467-468; 74 Am. Dec. at p. 588):

> Under the old system of levy courts and tax commissioners, when appointed by the executive, it was never said that they had not power to make assessments and levy taxes. They were not elected by the people nor accountable to them. They were appointed under legislative authority by the executive, and the state exercised its supreme power of taxing the people through their agency. So here, the state chooses to substitute commissioners in the place of the city authorities for the purpose of levying this tax, and we see no sufficient reason for denouncing the law on that account. That such a power may be delegated, see *Burgess* v. *Pue*, 2 Gill, 11.

And the same court, considering a similar question with relation to unusual powers conferred upon the State Board of Health by an act of the Maryland Legislature, said:

> The rule as laid down by the many text-writers is to the effect that the power to tax is inherently a legislative function, to be exercised only by that department of the government, and that it can be delegated only to municipal corporations. 37 Cyc. 725; Cooley on Taxation (2d Ed.) 61, 63, 65. And some of the decisions ably support this view. * * * *Van Cleve* v. *Passaic Valley Sewerage Commission*, 71 N. J. Law, 574 * * *.
>
> But the proposition of law is by no means as broad as its language might be taken to imply, and in numerous instances authority conferred by Legislatures upon school boards and school commissioners to fix the amount of the tax to be levied for the maintenance of schools has been sustained.
>
> The rule in this state is that laid down in *Baltimore* v. *State*, 15 Md. 376, 74 Am. Dec. 572.
>
> *Welch* v. *Coglan*, 126 Md. 1; 94 Atl. 384, 388.

It follows that at the time of the enactment of the Organic Act for Puerto Rico, March 2, 1917, it had been the almost universal custom throughout this country from the beginning of its history, in ordinances and statutes providing for local improvements, to delegate the function of precisely

fixing the aggregate amounts of the assessments against benefited lands, to administrative commissions, boards and officials. When Congress in that Organic Act (39 Stat. 958; 48 USCA 811) delegated to the Legislature of Puerto Rico "all local legislative powers in Puerto Rico," it must have been with the expectation and intention that the insular Legislature would thereby be empowered to follow the same practice and method with relation to such assessments.

C.—The case of *Van Cleve* v. *The Commissioners*, 71 N. J. Law 574, 60 Atl. 214, from which the Circuit Court of Appeals quotes (R. 105-106), is clearly distinguishable from the present case. In that case the state statute under consideration purported to delegate to an administrative board power to incur an indebtedness against the lands in a sewer district in any amount not in excess of nine million dollars and to levy annually a tax of unlimited amount upon the property in the district for purposes of amortization of said indebtedness and maintenance of the sewer system to be constructed. The sewer system was not only *not in existence* at the time of the attempted delegation of this power to the board, but its nature, extent and purposes were described only in the most general terms without any tangible limitation, express or implied, other than the $9,000,000 maximum, upon the discretion attempted to be conferred upon the board. As above pointed out, such conditions are not present in the case under consideration. The system whose cost of operation and maintenance the Commissioner of the Interior is here empowered to estimate was already in existence. Computations of its cost of operation and maintenance involve only fact finding and mathematical computation.

D.—THIS PARTICULAR POINT IS OF SPECIAL IMPORTANCE TO THE PETITIONER; *because, if the present opinion of the Circuit Court of Appeals is allowed to stand without modification, it will tend to upset the whole system of established practice that has been followed for almost 18 years, in the imposition and collection of special assessments for the main-*

tenance and operation of the South Coast Irrigation District, doubtless with resultant suits for repayments of moneys collected and expended.

This will be apparent at once upon a comparison between Act No. 49 of 1921, the act under attack in this case (App. I, *infra*, pp. 57-59) and Section 11 of its related prior act of August 8, 1913 (App. III, *infra*, pp. 69-70), under which the irrigation system in question is operated. In other words, if the provision in Act No. 49 requiring the State treasurer to compute the annual assessment in part on the basis of an estimate of the maintenance and operating cost to be prepared by the Commissioner of the Interior, constitutes an improper delegation of legislative authority, then the similar provision in Section 11 of the Act of 1913, above mentioned, is subject to the same objection.

CONCLUSION

For the reasons above set forth we respectfully submit that the writ of certiorari should be granted.

WILLIAM CATTRON RIGBY,
Colonel, Judge Advocate,
FRED W. LLEWELLYN,
Major, Judge Advocate,
Attorneys for Petitioner.

CHARLES E. WINTER,
Attorney General of Puerto Rico,
BLANTON WINSHIP,
The Judge Advocate General,
Of Counsel.

APPENDICES

APPENDIX I

Act No. 49 of the Puerto Rican Legislature, Approved July 8, 1921

(No. 49)

AN ACT

Fixing a Tax on Certain Lands Using Water from the Southern Coast Public Irrigation System, on Which Lands No Tax Whatsoever Was Levied Under the Public Irrigation Law, and for Other Purposes.

Be it enacted by the Legislature of Porto Rico:

Section 1.—That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.

Section 2.—That the tax to be levied on each tract of land receiving water from the irrigation system, but which under the law in force does not contribute towards defraying the cost of such system, shall be classified as follows: The Treasurer of Porto Rico shall have charge of fixing the total number of acres receiving water from the irrigation system which includes: (1) tracts of land subject to taxation pursuant to the provisions of the public irrigation law and amendments thereto, for the purpose of reimbursing the cost of the irrigation works; (2) tracts of land to which the Irrigation Commission acknowledged the right to the use of water or to which such right was acknowledged by the courts in cases of appeal, as rights acquired under the law for the use of water under prior concessions; (3) tracts of land irrigated with water delivered in accordance with acquired rights or concessions

which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or because of decisions of the Irrigation Commission, is delivered in whole or in part and is measured at the canals of the Irrigation Service system, and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts, by four, —that is to say, by the number of acre-feet per year established by the Public Irrigation Law as a normal rate for delivery per acre for the formation of the irrigation district; (4) parcels of land irrigated by water supplied because of acquired rights or concessions which have not been assigned, which said water, pursuant to the terms of the contracts entered into with the Commissioner of the Interior or under decisions of the Irrigation Commission, is taken and measured in the rivers at the points of intake indicated in the said concessions; and such tracts shall be determined by dividing the value of the said concessions in acre-feet per year, as the same may be or as shall have been fixed by the Commissioner of the Interior, by the Irrigation Commission or by decision of the courts in cases of appeal, by five. The Treasurer of Porto Rico shall then take amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operations and maintenance of the irrigation system during the following fiscal year (as provided under Section 11 of Act 128, approved August 8, 1913, which amends the Irrigation Law approved September 18, 1908), and shall add thereto or subtract therefrom, as the case may be, any resulting deficit between or surplus over, the amount expended and certified to as expended by the Commissioner of the Interior for expenses of operation and maintenance of the irrigation system during the preceding fiscal year, and the amount estimated or certified to as estimated by the Commissioner of the Interior for defraying the cost of operation

and maintenance of the irrigation system during the aforesaid preceding fiscal year. The Treasurer shall then divide the amount so determined by the total number of acres computed as hereinbefore provided, and the result shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the moneys collected shall be covered into the Insular Treasury to the credit of a special trust fund known as the "Irrigation Fund," to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof.

Section 3.—All laws or parts of laws in conflict herewith are hereby repealed.

Section 4.—This Act shall take effect ninety days after its approval.

Approved July 8, 1921.

APPENDIX II

Pertinent Extracts from an Act of the Puerto Rican Legislature, Approved September 18, 1908

AN ACT

To Provide for the Construction of an Irrigation System, and to Provide Revenues Therefor; for the Temporary Appropriation of Two Hundred Thousand Dollars to begin such Work, and for other Purposes.

Be it Enacted by the Legislative Assembly of Porto Rico:

Section 1.—The sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the Treasury not otherwise appropriated, for the purpose of carrying to completion the preparation of working plans and specifications for the construction of an irrigation system for the district situated approximately between the river Patillas on the east and the river Portugues on the west, and irrigable lands on both sides of both rivers and for the commencement and prosecution of the work of construction thereof, and expenses in connection therewith, until such time as sufficient funds shall be available in the Treasury from the sale of the bonds provided for such purpose by legislative enactment.

* * * * * *

Section 6.—Upon the approval of the plans, and after consultation with the engineer in charge, the Executive Council shall provide for letting the construction of the work by contract, either as a whole or in parts. The said contract or contracts shall be awarded after due call for bids, advertised both in the Island of Porto Rico and in the United States, *provided, however,* that the Executive Council reserves the right to reject any or all bids.

* * * * * *

Section 10.—Upon the completion of the whole or any part of the irrigation system, the Commissioner of the In-

terior shall provide for its maintenance and operation, and shall, with the approval of the Executive Council, make and award all necessary contracts and make the necessary by-laws, rules and regulations for patroling and for the disposition and use of the water in the district.

* * * * * *

Section 23.—The Irrigation Commission shall ascertain the value of all water rights and concessions which shall have been relinquished and transferred to the People of Porto Rico, and shall determine what amount will constitute a just credit on account thereof to be given upon the taxes assessed upon the lands appurtenant thereto, as distinguished from other lands not carrying any water concessions, complying in all respects with the provisions of the contracts for the relinquishment of said rights.

Section 24.—Upon the completion of the labors of the Commission, they shall transmit to the Treasurer the lists and maps of the lands to be included in the Irrigation District, as decided upon by them.

They shall also transmit to the Treasurer of Porto Rico their findings as to the value of the relinquished water concessions, and the deductions from annual assessments by reason thereof.

The said Commission shall thereupon adjourn, to meet thereafter only upon call of the Governor.

Section 25.—The Treasurer shall thereupon advertise for six consecutive days in two daily newspapers of general circulation throughout the Island of Porto Rico the fact that the lists and maps of the Irrigation District and the valuations of the water concessions and deductions to be made by reason thereof, are on file in his office and in the offices of the Alcaldia of the towns comprised in the Irrigation District, where the same shall be open to the inspection of the public.

Section 26.—In the ascertainment of what lands are to be included in the Irrigation District, and in estimating the value of relinquished water rights and of corresponding de-

ductions from the taxes assessed upon the lands by reason thereof, the decision of the said Irrigation Commission shall be *prima facie* true and correct, but any person or persons claiming to be aggrieved by the findings and conclusions shall have thirty days and no longer from and after the first advertisement of the Treasurer, as hereinbefore provided, within which time to file in the office of the Secretary of Porto Rico a statement of the facts upon which they base such alleged grievance. The Secretary of Porto Rico shall at the expiration of said thirty days certify to the District Court for the District where the lands are situated and to which the claims refer, the statements of facts so filed, and the said District Courts shall set a time not exceeding thirty days thereafter for a general hearing upon all of the questions of such grievances in one proceeding, in each of said Courts in which the parties so claiming to have been aggrieved shall have the right as in an ordinary civil proceeding to procure the attendance of witnesses, and on behalf of The People of Porto Rico the Commissioner of the Interior shall have the same right. The District Courts shall hear and determine the matters so presented and give judgment as in a civil action, confirming, modifying, or reversing the findings of the Irrigation Commission thereon, and from the judgment so entered by the District Courts one appeal for each district only shall lie to the Supreme Court of Porto Rico for the reviewing of those controversies in which parties claiming to be aggrieved by the judgments of the District Courts shall have given notice in said District Courts within thirty days after the filing of judgment therein that they appeal therefrom. The said Supreme Court shall render final and conclusive judgment upon all of said controversies; in said appeals any of the said parties affected by said judgments, including The People of Porto Rico, shall be entitled to be heard for the purpose of securing a revision by said Supreme Court of the judgments of the District Court for error of law or of findings of fact, said hearings in the District Courts and said appeal to the Supreme

Court shall be in the nature of a special proceeding in which said Courts shall hear and determine the controversies of the various parties without formality and without regard to technicality and upon such special rules of procedure as shall be provided and fixed by said Courts, respectively, and the appeals to the Supreme Court shall be deemed emergency matters which shall have precedence upon the calendar of said Supreme Court over all other controversies whatsoever; in the matter of notice, record and all other features of said procedure the Supreme Court shall adopt such rules and regulations as it shall deem in its judgment sufficient to do substantial justice to all of the parties concerned, and said Supreme Court may call for additional testimony or evidence whenever in its opinion the same is necessary to enable the Court to properly review any finding of fact.

Section 27.—Upon all lands in the Irrigation District there shall be assessed a uniform amount per acre, upon a basis to be determined as herein provided.

Section 28.—The amount that shall be assessed and levied upon a given tract of land for any fiscal year shall be determined as follows:

The Treasurer of Porto Rico shall estimate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, plus the total amount due upon credits for the ensuing year on account of relinquished water rights; and shall add thereto the amount estimated and certified to him by the Commissioner of the Interior for the cost of maintenance and repairs for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the amount of any deficit or surplus, as the case may be, remaining in the Irrigation Fund from the operations of the current or prior fiscal years. He shall then add thereto an amount equivalent to five per cent of the total, as a margin of safety for delayed collections, and the amount thus determined by the Treasurer of Porto Rico shall be and constitute the total sum assessed for said fiscal

year, and the same shall be and is hereby levied upon the lands in question in the proportion that the area of any particular tract of land bears to the whole number of acres irrigated. The amounts resulting from such computation shall be extended upon the tax roll for the different tracts, respectively, embraced within said district with the proper deductions therefrom in proper cases as herein provided on account of relinquished water rights. The tax roll so extended shall be completed by the Treasurer of Porto Rico on or before the 1st day of July of each year, and is hereby imposed as a charge upon said lands in favor of The People of Porto Rico, and shall, from this date, constitute a tax, the lien of which shall be superior and prior in law to any right, claim or lien of any other nature save and except the general taxes of Porto Rico as provided by law, and same shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof and to the embargo and sale of the land to enforce collection thereof in the manner and at the times now or hereafter provided by law for the collection and enforcement of other real property taxes. *Provided, however,* that in order not to inflict any unnecessary burden upon said lands during the period of construction, no assessment shall fall upon any tract of land until the part of the irrigation system in which the tract is situated has been in active operation for one year, but thereafter the said tract of land shall be liable, at the regular assessment dates, for the same proportionate assessments as would have been the case had all the lands in the District been included in the assessments for said year, under the prior provisions of this Section; *provided, further,* that payments made from the Irrigation Fund during the period of construction to meet interest or any expenses of maintenance and operation shall be assessed and refunded in the following special manner: The Auditor shall make an equal distribution thereof over the whole period of the life of the bonds and at the end of each fiscal year he shall certify to the Treasurer the amount thereof corresponding to the fiscal year to be included in the

amount to be assessed under the term "deficit" as aforesaid.

* * * * * *

Section 34.—This Act shall be known and referred to as the Public Irrigation Law and shall take effect from and after its approval by the Governor of Porto Rico.

Approved September 18, 1908.

APPENDIX III

Pertinent Extracts from Act No. 128 of the Legislature of Puerto Rico, Approved August 8, 1913

No. 128

AN ACT

To Amend Certain Sections of the Public Irrigation Law, approved September 18, 1908, as amended * * * and for other purposes.

Be it Enacted by the Legislative Assembly of Porto Rico:

Term of office of Irrigation Commission extended.

Section 1.—That the term of office of the Irrigation Commission, as at present constituted, or as hereafter constituted under the provisions hereof, insofar as the same was limited by Section 15 of the Public Irrigation Law, approved September 18, 1908, as amended March 9, 1911, be, and hereby is, extended to include such time as shall be required for the completion of the additional duties imposed upon the said Irrigation Commission by the provisions of this Act.

Section 2.—That the said Irrigation Commission shall have the power, and are hereby directed, to fix, according to the provisions hereinafter contained, the geographical boundaries of both a temporary and a permanent irrigation district; to determine what irrigable land shall be included therein; and to determine, as hereinafter provided, the value of water rights or concessions, and the basis for the computation of credits to be given on account thereof, on the taxes to be assessed as hereinafter provided upon the lands to which the said water rights or concessions are appurtenant.

* * * * * *

Appeals from decisions of the Commission in connection with the permanent irrigation district.

Section 10.—In the determination of what lands are to be included in the said permanent irrigation district, and of the value of relinquished water rights or concessions in connection therewith, and of

the basis for the computation of credits on taxation on account thereof, the decision of the said Irrigation Commission shall be considered *prima facie* true and correct. Any person or persons, however, including The People of Porto Rico, claiming to be aggrieved by any decision of the said Irrigation Commission as to the inclusion or exclusion of any land in or from the said permanent irrigation district, or as to the value of the said water rights or concessions in connection therewith, or as to the basis for the computation of credits on taxation on account thereof, shall have ninety days, and no longer, from and after the date of the beginning of the permanent irrigation district, as hereinbefore provided, within which time to file in the office of the Secretary of the District Court of San Juan a statement of the facts upon which such grievance is based. The District Court of San Juan shall set a time, as soon as may be thereafter, for a general hearing upon all of the questions of such grievances in one proceeding, and shall hear all such complaints filed in such court, respectively, together in one proceeding. The parties so claiming to have been aggrieved shall have the right, as in any ordinary civil proceeding, to procure the attendance of witnesses, and on behalf of The People of Porto Rico the Commissioner of the Interior shall have the same right. The district court shall hear and determine the matters so presented and give judgment as in a civil action, confirming, modifying or reversing the findings of the Irrigation Commission thereon. From the judgment so entered by the district court appeals shall lie to the Supreme Court of Porto Rico for the reviewing of those controversies in which the parties claiming to be aggrieved by the judgment of the said district court shall have given notice within thirty days after the filing of judgment therein that they appeal therefrom. Such an appeal may be taken by The People of Porto Rico and by any one or more of the complainants whose grievances were determined by the said district court. In case there is more than one appeal from the said district court, the said Supreme

Court shall consolidate and hear the same as a single appeal. The said Supreme Court shall render final and conclusive judgment upon all of the said controversies; in the said appeals any of the parties affected by the said judgments, including The People of Porto Rico, shall be entitled to be heard for the purpose of securing a revision by the said Supreme Court of the judgment of the said district court for error of law or finding of fact, the said hearings in the said district court and the said appeals to the said Supreme Court to be in the nature of a special proceeding in which the said courts, respectively, shall hear and determine the controversies of the various parties without formality and upon such special rules of procedure as shall be provided and fixed by the said courts respectively, and the said courts shall give public notice of the dates upon which hearings are to be held, at least thirty days in advance of the dates thereof. The appeals to the said Supreme Court shall be deemed emergency matters which shall have preference on the calendar of the said Supreme Court over all other controversies whatsoever except appeals pending in felony cases; in the matter of notice, record and all other features of the said procedure, the said Supreme Court shall adopt such rules and regulations as it shall deem sufficient to do substantial justice to all the parties concerned, and the said Supreme Court may call for additional testimony or evidence whenever in its opinion the same is necessary to enable the said Supreme Court properly to review any finding of fact. At any time up to within fifteen days of the date set for the hearing of such appeals in the said district court or in the said Supreme Court the owner or owners of land, or The People of Porto Rico, shall have a right to join in and be heard upon such appeal, and any owner or owners of land, or The People of Porto Rico, shall have a right to take an appeal from the decision of the said district court, whether or not they were parties to the appeal in the said district court, and any person so becoming a party to an appeal or appealing shall have the right to have the

question of their continued inclusion in or exclusion from the permanent irrigation district determined in any such proceedings, as well as to contest the exclusion or inclusion of land of others involved in the appeal.

Section 11.—The amount that shall be assessed and levied upon a given tract of land included in the permanent irrigation district shall be determined as follows:

Method and amount of taxation during the permanent irrigation district.

The Treasurer of Porto Rico shall calculate the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year, and shall add thereto the total amount due upon credits for the ensuing year on account of water rights or concessions; and shall further add thereto the amount estimated and certified as estimated to him by the Commissioner of the Interior for the cost of operation and maintenance of the irrigation system for the said ensuing fiscal year. He shall then either add to or subtract from the amount so obtained the estimated amount of any deficit or surplus, as the case may be, existing in connection with the Irrigation Fund from the operations of the current fiscal year. From this amount he shall subtract the amount estimated and certified as estimated to him by the Commissioner of the Interior as the receipts for the ensuing fiscal year from any water power developed in connection with the irrigation system (until such time as the total bonded indebtedness incurred on account of the irrigation system shall have been paid in full); and the amount estimated and certified as estimated to him by the Commissioner of the Interior as receipts for the ensuing fiscal year from any other sources except from the issues of bonds and from special assessments herein provided for to be levied upon the land in the permanent irrigation district. To the amount so determined the Treasurer shall add an amount equivalent to two per centum of the total as a margin of safety for delayed collections, and the amount thus determined by the

Treasurer of Porto Rico, subject to the limitations and provisions hereinafter set forth, shall be and constitute the total sum assessed for the said fiscal year, and the same shall be levied upon the lands at the time included in the permanent irrigation district (including any lands owned by The People of Porto Rico which form part of the said district, which lands shall be liable for and pay taxes levied hereunder in the same manner as the other lands included in the said irrigation district); *Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district; *Provided, further, however,* That if any portion of the principal of any bonds falling due in any year cannot be paid under an assessment levied according to the provisions of this section, then the amount which cannot so be paid and for the refunding of which provision is hereinafter made, shall not be deemed a deficit in any subsequent year; *And provided, further*; That prior to the certifying by the Commissioner of the Interior of the amount thus estimated by him as receipts from water power, the Commissioner of the Interior may, if in his judgment it is advisable, deduct from the amount thus estimated by him a sum not to exceed 25 per cent of the said amount for the development and extension of the said water power.

The amount of credit on taxes to which any tract of land having a water right or concession shall be entitled on account of the relinquishment of the same shall be such percentage of such taxes as shall have been determined by the Irrigation Commission as hereinbefore provided.

No tract of land included in the permanent irrigation district shall pay any tax until it shall have received or have been offered water from the irrigation system for a period of twelve months (said water to have been received after the inclusion of the said land in the temporary irrigation district, or, if the said land is first included in the permanent irrigation district, after the said inclusion); but thereafter the said tract of land shall be liable at the regular assessment

dates to the same assessments as would have been the case had all the lands in the permanent irrigation district been assessed under the provisions of this section; *Provided,* That the said tract of land shall pay a tax for the portion of the half year (either fiscal or calendar, as the case may be), if any, remaining after the completion of the said period of twelve months, for which no taxes are paid in accordance with the foregoing provisions, and the tax due for any such portion of a half year shall be payable upon the first of the month succeeding the completion of the said period of twelve months for which no taxes are paid in accordance with the foregoing provisions.

Assessments under the foregoing provisions shall be made upon each particular tract of land in the proportion that the area of such tract of land bears to the whole number of acres included in the said permanent irrigation district. The amounts resulting from such computation, or if such amounts exceed the amount which can be assessed under the provisions hereof, then such maximum amount as may be assessed under the said provisions, shall be extended upon the tax roll for the different tracts at the time comprising the permanent irrigation district, after first deducting in the case of any land entitled to a credit for a water right or concession the proper credit to which the said tract of land is entitled, computed according to the provisions hereinbefore contained. The tax roll so extended shall be computed by the Treasurer of Porto Rico on or before the first day of July of each year, and is hereby imposed as a charge upon the said lands (but not as a personal liability upon the owners thereof) in favor of The People of Porto Rico, and shall constitute a tax the lien of which shall be superior and prior in law to any right, claim or lien of any other nature, save and except the general taxes of Porto Rico as provided by law, and the same shall become due and the Treasurer of Porto Rico shall proceed to the collection thereof, and to the embargo and sale of the land to enforce the collection thereof, in the manner and at the time now or here-

after provided by law for the collection and enforcement of other real property taxes except that in the case of taxes assessed for a period of less than six months as hereinbefore provided the said taxes shall be assessed, levied and collected as hereinbefore provided; *Provided, however,* That anything hereinbefore contained to the contrary notwithstanding, (1) in case any assessment for any fiscal year determined as above provided shall amount to more than fifteen dollars ($15) per acre per annum, prior to deducting credits for relinquished water rights or concessions, then the assessment for such fiscal year shall exceed fifteen dollars ($15) per acre per annum only to the extent that it is necessary that the assessment should exceed the said rate in order to provide for the payment of interest, operation and maintenance, the deficit of the preceding year, if any; (*Provided, however,* That no deficit shall be carried over from the temporary irrigation district to the permanent irrigation district,) and the two per centum margin of safety provided for above, plus fifty thousand dollars ($50,000) for the payment of the principal of bonds falling due in the said fiscal year, less the surplus, if any, of the preceding year and any estimated receipts as income from other sources, as above provided; and (2) that no tax for the payment of any part of the interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided shall be paid on any tract of land which has received or has been offered, prior to the date for payment of the said tax, water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have received or shall have been offered, during the preceding fiscal year, water from the irrigation system, as shown by the records of the Irrigation Service, to the amount of at least one acre foot per acre during the first six months thereof and at least one acre foot per acre during the second six months thereof; *Provided, further,* That when in the above case the said tax is due upon the first of July terminating the fiscal year to which the above test is to be applied, then the said land

shall pay the said tax if it shall have received or shall have been offered water from the irrigation system during the first six months of the said fiscal year, to the amount of at least one acre foot per acre; *Provided, further,* That no tax for the payment of any part of the interest and principal due upon outstanding irrigation bonds for any fiscal year, assessed as above provided, shall be paid on any tract of land which has not, prior to the date for payment of the said tax, received or been offered water from the irrigation system for more than one full fiscal year, unless the said tract of land shall have received or shall have been offered water from the irrigation system as shown by the records of the Irrigation Service to the amount of at least one acre foot per acre during the next preceding half year (either calendar or fiscal) ending more than one month prior to the date of the said payment; *Provided, further, however,* That the foregoing exemptions from taxation conditioned upon the receipt by, or the offering to, the lands within the Irrigation district of a certain amount of water from the irrigation system shall cease to be operative and effective at such time after the beginning of the permanent irrigation district as the Chief Engineer of the Irrigation Service shall certify to the Commissioner of the Interior that each fundamental integral part of the irrigation system has been constructed.

The amount which may be included in the assessment for any one fiscal year for the payment of the principal of the bonds shall not exceed one hundred and fifty thousand dollars ($150,000).

Effect of an appeal upon status of land and taxation.

Section 12.—In case any land is included in the permanent irrigation district by the Irrigation Commission, and the owner or owners thereof, or The People of Porto Rico, shall appeal from such inclusion, the land shall be assessed and shall pay taxes at the rate and under the conditions fixed in the decision of the Commission appealed from until finally

excluded by the district court or the Supreme Court. If the said land is finally so excluded the Treasurer of Porto Rico shall refund, out of the Irrigation Fund, the amount of taxes paid during the existence of the permanent irrigation district, provided the land has, during the existence of the permanent irrigation district, received no water from the irrigation system. If the said land so excluded has received water from the irrigation system during the existence of the permanent irrigation district, the Treasurer of Porto Rico shall refund out of the Irrigation Fund any amount of taxes paid by the owner of the said land during the existence of the permanent irrigation district in excess of an average of fifteen dollars ($15) per acre per annum, prior to deducting credits for relinquished water rights or concessions. In connection herewith, and in reference to the revision and recovery of taxes assessed and collected under the provisions hereof, it shall be understood that the general tax laws of Porto Rico do not apply.

If any tract of land shall be excluded from the permanent irrigation district by the Irrigation Commission, but afterward included by virtue of an appeal either by the owner or owners, or by The People of Porto Rico, the said land shall, after such inclusion, be assessed at the same rate as the other lands in the district, but it shall not pay any tax until it shall have had or shall have been offered water from the irrigation system for a period of twelve months.

If any tract of land, after having been included in the temporary irrigation district, shall be finally excluded from the permanent irrigation district by the Irrigation Commission, or by the district court, or by the Supreme Court, the said land shall be entitled to continue to receive water from the irrigation system up to the harvesting of the crop if any, then growing upon the said land, and shall pay therefor at the same proportional rate of taxation and under the same conditions as the other land in the said permanent irrigation district.

Non-relinquished water rights or concessions.

Section 13.—In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.

Commissioner of the Interior empowered to negotiate in relation thereto.

The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights of concessions, and with the owner or owners of any water rights or concessions heretofore relinquished or surrendered on condition that the lands to which they are appurtenant should form part of the irrigation district, and which lands have not been included by the Irrigation Commission, and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the land to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent. Before entering into any such agreement the Commissioner of the Interior shall consult the Attorney General of Porto Rico as to the validity and legal status of the water rights or concessions involved.

Powers of Commission in relation thereto.

In the case of any water right or concession in connection with which no such contract or agreement is made prior to Jnauary 1, 1914, the Irri-

gation Commission shall have the power to decide as to the validity and the legal status of any such water right or concession, and in the case of valid and subsisting water rights or concessions to determine what amount of water must be delivered by the Irrigation Service to the lands to which such water rights or concessions are appurtenant.

Rights of appeal in relation thereto.

Any owner or owners of any lands carrying water rights or concessions aggrieved by any such decision of the said Irrigation Commission, or the Attorney General of Porto Rico on behalf of The People of Porto Rico, may appeal from from the said decision to the district court of the district in which the said land is situated. The said appeal many be taken at any time within, and not after ninety (90) days from the date of the beginning of the temporary irrigation district if the said decision is made by the Irrigation Commission in connection with the formation of the temporary irrigation district, and within and not after ninety (90) days from the date of the beginning of the permanent irrigation district if the said decision is made by the Irrigation Commission in connection with the formation of the permanent irrigation district. An appeal may be taken to the Supreme Court of Porto Rico by any party, including The People of Porto Rico, aggrieved by the decision of the district court made as provided in this section, within thirty (30) days after the rendering of the said decision. Pending the final determination of the questions involved in any appeal taken under the provisions of this section, the decision of the said Irrigation Commission shall be binding both upon the Irrigation Service and the owner or owners of the water rights or concessions involved.

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Standard of water.

Section 18.—The amount of water which shall be set as a standard for the establishment of both the temporary and permanent irrigation districts shall be four acre feet per acre

per annum, the said standard to be applied on the basis of fair average years.

* * * * * *

Repeal of former laws.

Section 36.—That sections 21, 23, 24, 25, 26, 27, 28 and 30 of the Public Irrigation Law, approved September 18, 1908, as amended by subsequent enactments be and the same hereby are, repealed; that sections 7 and 8 of the Act amending the Public Irrigation Law, approved March 9, 1911, be repealed; that all other parts of the Public Irrigation Law and of the Act amending and amplifying said law, approved March 9, 1911, and all other laws and parts of laws, in conflict with this Act, be and the same hereby are, repealed.

Section 37.—This Act shall take effect immediately upon its approval.

Approved, August 8, 1913.

APPENDIX IV

PUERTO RICAN CODE PROVISIONS SHOWING THE CHARACTERISTICS OF THE SOCIEDAD EN COMANDITA

NOTE: The ensuing Spanish texts are quoted from the official "Compilación de los Estatutos Revisados y Códigos de Puerto Rico," 1911, to which the parenthetical references preceding the Spanish text of each article relate.

The Spanish text of each article is here followed immediately by the official English text, as it appears in the "Compilation of the Revised Statutes and Codes of Porto Rico," compiled in the Bureau of Insular Affairs, War Department, and published in 1913, as Senate Document No. 813, 61st Congress, to which the parenthetical references preceding the English text of each article relate.

Where the official English text of any article herein quoted is here followed by a second English version, the latter represents what counsel for the petitioner in this case regard as a more accurate translation, prepared by one of the attorneys for the petitioner in this case, with more careful regard to the precise legal significance of the original Spanish, retaining some Spanish words for which there is no satisfactory English equivalent, with some parenthetical explanatory notes, and with all variances from the official English text indicated by italics.

CODE OF COMMERCE

Official Spanish: LIBRO SEGUNDO.—De los Contratos Especiales del Comercio.

TÍTULO I.—De las Compañías Mercantiles.

Sección Primera.—De la Constitución de las Compañías y de sus Clases.

Official English: BOOK II.—Special Commercial Contracts.

TITLE I.—Commercial Companies.

Section I.—Manner of Establishing Companies and their Kinds.

Our version: BOOK II.—*Particular Kinds of Commercial Contracts.*

TITLE I.—Commercial Companies.

Section I.—Manner of Establishing Companies and their Kinds.

* * * * *

Official Spanish: (7675) ARTÍCULO 116. El contrato de compañía, por el cual dos o más personas se obligan a poner en fondo commún bienes, industria o alguna de estas cosas, para obtener lucro, será mercantil, cualquiera que fuese se clase, siempre que se haya constituído con arreglo a las disposiciones de este Código.

Una vez constituída la compañía mercantil, tendrá personalidad jurídica en todos sus actos y contratos.

Official English: (7675) ART. 116. Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this Code.

After a commercial association has been established, it shall have legal representation in all its acts and contracts.

Our version: Article 116. *The company contract* by which two or more persons obligate themselves to place in a common fund any property, industry or any of these things in order to obtain profit shall be commercial no matter what its class may be, provided it *is* established in accordance with the provisions of this Code.

After a commercial *company* has been established, it shall have *juridical personality* in all its acts and contracts.

* * * * *

Official Spanish: (7681) ARTÍCULO 122. Por regla general, las compañías mercantiles se constituirán adoptando alguna de las siguientes formas:

1. La regular colectiva, en que todos los socios, en nombre colectivo y bajo una razón social, se comprometen a participar, en la proporción que establezcan, de los mismos derechos y obligaciones.

2. La comanditaria, en que uno o varios sujetos aportan capital determinado al fondo común, para estar a las resultas

de las operaciones sociales dirigidas exclusivamente por otros con nombre colectivo.

3. La anónima, en que formando el fondo común los asociados por partes o porciones ciertas, figuradas por acciones o de otro manera indubitada, encargan su manejo a mandatarios o administradores amovibles que representen a la compañía bajo una denominación apropiada al objeto o empresa a que destine sus fondos.

Official English: (7681) ART. 122. As a general rule commercial associations shall be established by the adoption of any of the following forms:

1. The regular general copartnership in which all the partners, under a collective and commercial name, bind themselves to participate in the proportion which may be established, in the same rights and obligations.

2. The limited copartnership to which one or more persons contribute a specific amount of capital to a common fund, and become liable for the transactions of the firm executed exclusively by others under a collective name.

3. The corporation, in which the members form the common fund by means of specific parts or portions, represented by shares or in any other unquestionable manner, leaving its management to removable managers or administrators, who represent the company under an appropriate denomination according to the purpose or undertaking for which funds are to be employed.

Our version: ARTICLE 122. As a general rule, mercantile *companies may* be established by the adoption of any of the following forms:

1. The regular *"collectiva"* in which all the *members,* under a collective and commercial name, bind themselves to participate in the proportion(s) which *they may establish,* in the same rights and obligations.

2. The *"comanditaria" in* which one or more persons contribute a specific amount of capital to *the* common fund, *to abide the results of the common transactions* (*"de las operaciones sociales"*) *directed* by others under *the* collective name (*"con nombre colectiva"*).

3. The *"anónima"* in which the members form the common fund by means of specific parts or portions represented by shares or in any other *certain* manner, leaving its management to removable managers or administrators who represent the company under a *name* (*"denominación"*) *appropriate to the* purpose or undertaking for which the funds are to be employed.

* * * * *

Official Spanish: (7705) ARTÍCULO 146. La compañía en comandita girará bajo el nombre de todos los socios colectivos, de algunos de ellos o de uno solo, debiendo añadirse, en estos dos últimos casos, al nombre o nombres que se expresen las palabras "y compañía," y en todos, las de "sociedad en comandita."

Official English: (7705) ART. 146. Limited copartnerships must transact business under the name of all the members thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given, the words "and company" and in in all cases the words "limited copartnership."

Our version: ARTICLE 146. The *compañía en comandita" will* transact business under the name of all the *general* members (*"socios colectivos"*) thereof, of several of them, or of one only, it being necessary to add in the latter two cases to the name or names given, the words "and company," and in all cases the words *"sociedad en comandita."*

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CIVIL CODE

Official Spanish: (3161) ARTÍCULO 27. Son personas jurídicas:

1. Las corporaciones, asociaciones y fundaciones de interés público, con personalidad jurídica reconocida por la ley.

Su personalidad empieza desde el instante mismo, en que con arreglo a derecho, hubiesen quedado válidamente constituídas.

2. Las asociaciones de interés particular, sean civiles,

mercantiles o industriales, a las que la ley concede personalidad jurídica.

Official English: (3161) SEC. 27. The following are artificial persons:

1. Corporations, associations and institutions of public interest, having artificial personality recognized by law.

The personality of such bodies shall commence from the moment of their establishment in accordance with law.

2. Private associations, whether civil, commercial or industrial, to which the law grants legal personality.

Our version: ARTICLE 27. The following are *juridical* persons:

1. Corporations, associations, and institutions (*foundations*) of public interest, with juridical personality recognized by *the* law.

Their personality *commences from the moment when in accordance with the law they have been validly established.*

2. Private associations, whether civil, commercial or industrial, to which the law grants *juridical* personality.

* * * * *

Official Spanish: (4673) ARTÍCULO 1567. La sociedad es un contrato por el cual dos o más personas se obligan a poner en común, dinero, bienes o industria, con ánimo de partir entre sí los ganancias.

Official English: (4673) SEC. 1567. Partnership is a contract by which two or more persons bind themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves.

Our version: ARTICLE 1567. *The "sociedad"* is a contract by which two or more persons bind themselves to contribute money, property, or industry, to a common fund with the intention of dividing the profits among themselves.

* * * * *

Official Spanish: (4675) ARTÍCULO 1569. La sociedad civil se podrá constituir en cualquier forma, salvo que se aportaren a ella bienes inmuebles o direchos reales, en cuyo caso será necesaria la escritura pública.

Official English: (4675) SEC. 1569. Civil partnerships may be established in any form whatever, unless when real property or property rights should be contributed to the same, in which case a public instrument (*"escritura publica"*)

Our version: ARTICLE 1569. The *civil "sociedad"* may be established in any form whatever unless when real property or *real* property rights *shall* be contributed to the same, in which case a public instrument (*"escritura publica"*) shall be necessary.

* * * * *

Official Spanish: (4677) ARTÍCULO 1571. No tendrán personalidad jurídica las sociedades cuyos pactos se mantengan secretos entre los socios, y en que cada uno de éstos contrate en su propio nombre con los terceros.

Esta clase de sociedades se regiran por las disposiciones relativas a la comunidad de bienes.

Official English: (4677) SEC. 1571. Partnerships, the articles of which are kept secret among the partners, and in which each one of the latter may contract in his own name with third persons, shall have no judicial personality.

This kind of partnership shall be governed by the provisions relating to property held in common.

Our version: ARTICLE 1571. *The "sociedad" will not have juridical personality if the contract creating it is kept secret among the members and if each of the members contracts in his own name with third persons.*

This kind of *"sociedad"* shall be governed by the provisions relating to property held in common.

Official Spanish: (4678) ARTÍCULO 1572. Las sociedas civiles, por el objeto a que se consagren, pueden revestir todas las formas reconocidas por el Código de Comercio. En tal caso, les serán aplicables sus disposiciones en cuanto no se opongan a las del presente código.

Official English: (4678) SEC. 1572. Civil partnerships, on account of the objects to which they are devoted, may adopt all the forms accepted by the Code of Commerce. In

such case its provisions shall be applicable in so far as they do not conflict with those of this Code.

Our version: ARTICLE 1572. *The civil "sociedades" according to* the objects to which they *may be* devoted, may adopt all the forms *recognized* by the Code of Commerce. In such case its provisions shall be applicable *to them,* in so far as they do not conflict with those of this Code.

* * * * *

Official Spanish: (4700) ARTÍCULO 1594. El socio nombrado administrador en el contrato social, puede ejercer todos los actos administrativos sin embargo de la oposición de sus compañeros, a no ser que proceda de mala fe; y su poder es irrevocable sin causa legítima.

El poder otorgado después del contrato, sin que en éste se hubiera acordado conferirlo, puede revocarse en cualquier tiempo.

Official English: (4700) SEC. 1594. The partner who has been appointed manager in the articles of copartnership may execute all administrative acts, notwithstanding the opposition of his partners, unless he should act in bad faith; and his power is irrevocable without legitimate cause.

A power executed after the agreement, without there having been stipulated therein that it should be conferred, may be revoked at any time.

Our version: ARTICLE 1594. The *member named as* manager *in the company contract* (*"en el contrato social"*), may execute all administrative acts, notwithstanding the opposition *of other members of the company* (*"de sus compañeros"*), unless he should act in bad faith; and his power is irrevocable *except for good* cause.

A power executed after the *company contract* without *its* having been stipulated therein that it should be conferred, may be revoked at any time.

* * * * *

Official Spanish: (4706) ARTÍCULO 1600. Los socios no quedan obligados solidariamente respecto de las deudas

de la sociedad, y ninguno puede obligar a los otros por un acto personal, si no le han conferido poder para ello.

La sociedad no queda obligada respecto a tercero por actos que un socio haya realizado en su propio nombre o sin poder de la sociedad para ejecutarlo; pero queda obligada para con el socio en cuanto dichos actos hayan redundado en provecho de ella.

Lo dispuesto en este artículo se entiende sin perjuico de lo establecido en la regla 1 del artículo 1597.

Official English: (4706) SEC. 1600. Partners are not jointly bound with regard to the debts of the partnership, and none of them can bind the others by a personal act, if they have not granted him a power therefor.

The partnership is not liable with regard to third persons for an act which one partner may have performed in his own name or without a power from the partnership therefor; but it is liable to the partner in so far as said acts have benefited said partnership.

The provisions of this section shall be understood without prejudice to the provisions of rule first of section 1597.

Our version: ARTICLE 1600. *The members* are not jointly bound *for* the debts of the *"sociedad"* and none of them can bind the others by a personal act, if they have not granted him the power therefor.

The "sociedad" is not liable *to* third persons for an act which one *member* may have performed in his own name or without a power from the *"sociedad"* therefor; *but the "sociedad" will remain obligated with the member* in so far as *such* acts have *redounded to its profit.*

The provisions of this section shall be understood *to be* without prejudice to the provisions of rule first of Section 1597.

NOTE: Article 1597 provides that when no method of administering the *"sociedad"* has been stipulated, the following rule will be observed:

All of the members will be considered its agents, and whatever either of them does by himself will bind the *"sociedad,"* but any one of them may oppose the acts of

the others at any time before they have produced any legal effect.

Official Spanish: (4707) ARTÍCULO 1601. Los acreedores de la sociedad son preferentes a los acreedores de cada socio sobre los bienes sociales. Sin perjuicio de este derecho, los acreedores particulares de cada socio pueden pedir el embargo y remate de la parte de éste en el fondo social.

Official English: (4707) SEC. 1601. The creditors of the partnership shall be preferred to the creditors of each partner with regard to the partnership property. Without prejudice to this right, the private creditors of each partner may demand the attachment and sale at auction of the latter's share in the partnership capital.

Our version: ARTICLE 1601. The creditors of the *"sociedad"* shall be preferred to the creditors of *each* member with regard to the *company* property (*"los bienes sociales"*). Without prejudice to this right the *personal* creditors of each *member* may demand the attachment and sale at auction of the latter's share in the *common* capital (*"en el fondo social"*).

Official Spanish: (4708) ARTÍCULO 1602. La sociedad se extingue:

1. Cuando expira el término por que fué constituida.

2. Cuando se pierde la cosa, o se termina el negocio que le sirve de objeto.

3. Por la muerte natural, interdicción civil o insolvencia de qualquiera de los socios, y en el caso previsto en el artículo 1601.

4. Por la voluntad de cualquiera de los socios, con sujeción a lo dispuesto en los artículos 1607 y 1609.

Se exceptúan de lo dispuesto en los números 3 y 4 de este artículo las sociedades a que se refiere el artículo 1572 en los casos en que deban subsistir con arreglo al Código de Comercio.

Official English: (4708) SEC. 1602. Partnership is dissolved:

1. When the term for which it was constituted expires.

2. When the thing is lost, or the business for which it was constituted ends.

3. By the natural death, civil interdiction, or insolvency of any of the partners, and in the case prescribed in Section 1601.

4. By the will of any of the partners, subject to the provisions of sections 1607 and 1609.

The partnerships referred to in section 1572 are excepted from the provisions of numbers 3 and 4 of this section, in the cases in which they should exist, according to the Code of Commerce.

Our version: ARTICLE 1602. The *"sociedad"* is dissolved:

1. When the term for which it was constituted expires.

2. When the thing is lost, or the business for which it was constituted ends.

3. By the natural death, civil interdiction or insolvency of any of the *members*, and in the case prescribed in Section 1601.

4. By the *wish* (*"voluntad," that is, the voluntary action or election*) of any *one* of the *members*, subject to the provisions of Sections 1607 and 1609.

The *"sociedades"* referred to in *Art.* 1572 are excepted from the provisions of *subparagraphs* numbers 3 and 4 of this *article*, in *those* cases in which they *are organized in accordance with* the Code of Commerce.

* * * * *

Official Spanish: (4713) ARTÍCULO 1607. La disolución de la sociedad por la voluntad o renuncia de uno de los socios únicamente tiene lugar cuando no se ha señalado término para su duración, o no resulta éste de la naturaleza del negocio.

Para que renuncia surta efecto, debe ser hecha de buena fe en tiempo oportuno; además debe ponerse en conocimiento de los otros socios.

Official English: (4713) Sec. 1607. The dissolution of the partnership by the will or withdrawal of one of the partners shall only take place when a term for its duration has

not been fixed, or if this term does not appear from the nature of the business.

In order that the withdrawal may be of effect, it must be made in good faith at the proper time; notice thereof shall also be given to the other partners.

Our version: ARTICLE 1607. The dissolution of the "*sociedad*" by the *wish* ("*voluntad*") or withdrawal of one of the *members shall take place only* when a term for its duration has not been fixed, or *is not implied* from the nature of the business.

In order that the withdrawal may be of effect, it must be made in good faith *in opportune* time; notice thereof *must* also be given to the other members.

* * * * *

Official Spanish: (4715) ARTICULO 1609. No puede un socio reclamar la disolución de la sociedad que, ya sea por disposición del contrato, ya por la naturaleza del negocio, ha sido constituida por tiempo determinado, a no intervenir justo motivo, como el de faltar uno de los compañeros a sus obligaciones, el de inhabilitarse para los negocios sociales, u otro semejante, a juicio de los tribunales.

Official English: (4715) SEC. 1609. No partner can demand the dissolution of a partnership which, either by a provision of the articles or by the nature of the business, has been constituted for a specified time unless there should exist sufficient reason, such as when one of the partners fails to comply with his obligations, or when he becomes incapacitated for the partnership business, or any other similar cause, in the judgment of the courts.

Our version: ARTICLE 1609. No *member* can demand the dissolution of a "*sociedad*" which, either by a provision of the *contract*, or by the nature of the business, has been constituted for a specified time, unless there should exist sufficient reason, such as when one of the *members* fails to comply with his obligations, or when he becomes incapacitated for the *common* business, or any similar cause, in the judgment of the courts.

CODE OF CIVIL PROCEDURE

* * * * *

Official Spanish: (5035) ARTÍCULO 51. Toda acción deberá ejercitarse en nombre de la parte realmente interesada, excepto in los casos en que se dispone otra cosa por este Código. La comparecencia ante las cortes deberá hacerse por medio de abogado legalmente autorizado para ejercer su profesión conforme a las disposiciones de la ley.

Official English: (5035) SEC. 51. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in this Code. Appearance in court shall be made through an attorney legally empowered to exercise his profession under the provisions of this law.

Our version: ARTICLE 51. Every action must be prosecuted in the name of the real party in interest except *in those cases in which it is* otherwise provided in this Code. Appearance in court shall be made through an attorney legally empowered to exercise his profession under the provisions of this law.

* * * * *

Official Spanish: (5057) ARTÍCULO 73. Cuando dos o más personas, associadas en cualquier negocio, lo realizan bajo un nombre común, comprenda éste o no los nombres de dichas personas, los asociados podrán ser demandados bajo dicho nombre común, haciéndos en ese caso la citación a uno o más de los asociados; y al fallo del pleito quedarán obligados los bienes comunes de todos los asociados, de igual modo que si todos hubiesen sido demandados personalmente en virtud de su común responsabilidad.

Official English: (5057) SEC. 73. When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such case being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, in the same man-

ner as if all had been named defendants, and had been sued upon their joint liability.

Our version: ARTICLE 73. When two or more persons, associated in any business, transact such business under a common name, whether such *common name* comprises the names of such persons or not, the associates may be sued by such common name, the summons in such case being served on one or more of the associates; and the judgment in the action shall bind the *common* property (*"los bienes comunes"*) of all the associates, in the same manner as if all had been named defendants *by reason of their common* liability.

APPENDIX V

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

No. 210.

THE GREAT SOUTHERN FIRE-PROOF HOTEL COMPANY,
Petitioner,

vs.

BENJAMIN F. JONES, *et al.*

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL MEMORANDA FOR RESPONDENTS

(Filed March 24, 1900)

The action in this case is not brought by individuals, but by an association of individuals doing business as Jones & Laughlin, Limited. The bill avers that the association is one formed under and in accordance with the provisions of an act of the General Assembly of the State of Pennsylvania entitled "An act authorizing the formation of a partnership association in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances."

The date of the act, as set out in the bill, is given as June 23, 1874, as appears by the record. This date by mistake of the printer or some one else is incorrect, the proper date being June 2, 1874. The act will be found in the Session Laws of Pennsylvania for 1874, on page 271, and is the only act of 1874 referring to limited partnership associations. This act, together with its amendments and supplements, will be

found in the Revised Statutes of Pennsylvania, page 1086. By paragraph 16 of the act as found in the Revised Statutes, such associations are given the right to sue and be sued in the association name.

Paragraph 197 of the constitution of Pennsylvania provides that "The term 'corporations' as used in this article shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships" (Rev. Stat. Pa., p. 48).

The bill avers that complainant association is and was at all times mentioned in the bill a citizen of the State of Pennsylvania. Under the acts quoted above and the provision of the constitution referred to, this averment of citizenship was sufficient, the complainant association being, within the meaning of the statute, a corporation, in so far as such allegation of citizenship is concerned. The exact status of associations similar to that of complainant and organized under the same law is discussed and considered in Coal Company *vs.* Rogers, 108 Pa. State, 147.

That corporations are citizens within the meaning of the statute requiring proper citizenship of parties to confer jurisdiction upon the Federal courts is settled in many cases. (See Railway Co. *vs.* Whittner, 13 How., 270; Louisville R. R. Co. *vs.* Letson, 2d How., 497; also notes to sec. 152, Garland & Ralston's Federal Practice.)

Should the court be of opinion that the complainant association is not under the laws of Pennsylvania a citizen, but that it should be considered in the light of a general partnership, we still think the allegations of the bill as to citizenship are sufficient to confer jurisdiction.

In Express Co. *vs.* Kountze Bros., 8 Wall. 342, the declaration (see p. 347) described plaintiffs as "an association of persons carrying on the banking business in Omaha, Nebraska." This was held to be a sufficient averment of citizenship.

The bill here not only asserts that the association com-

plainant was a citizen of Pennsylvania, but sets out the names of all of its members and shareholders and alleges their office and place of business to have been in Pennsylvania.

Should the court, however, be of opinion that the bill, under no view that may be taken of it, sufficiently alleges diverse citizenship so as to confer jurisdiction, then we submit that in view of the fact that counsel for petitioners have not at any stage of the proceedings in any way objected to the jurisdiction of the court upon this or any other ground, and in further view of the fact that neither the circuit court nor the circuit court of appeals have intimated or considered any such objection, the complainant should be permitted, within the rule established in Robertson *vs.* Cease, 97 U. S. 646, to amend its complaint as to citizenship, the fact of such citizenship, both of the association and all of its members, being undisputed, and that the proper order allowing such amendment should be transmitted to the circuit court where the action was commenced.

At the request of counsel for cross-petitioner, Sossman & Landis, we suggest to the court that inasmuch as no such objection is urged as to jurisdiction in their case, the principal questions argued should be decided by the court as between them and the petitioner herein, irrespective of the judgment of the court as to jurisdiction in the case of Jones & Laughlin, Limited.

TALFOURD P. LINN,
Of Counsel for Respondents.

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

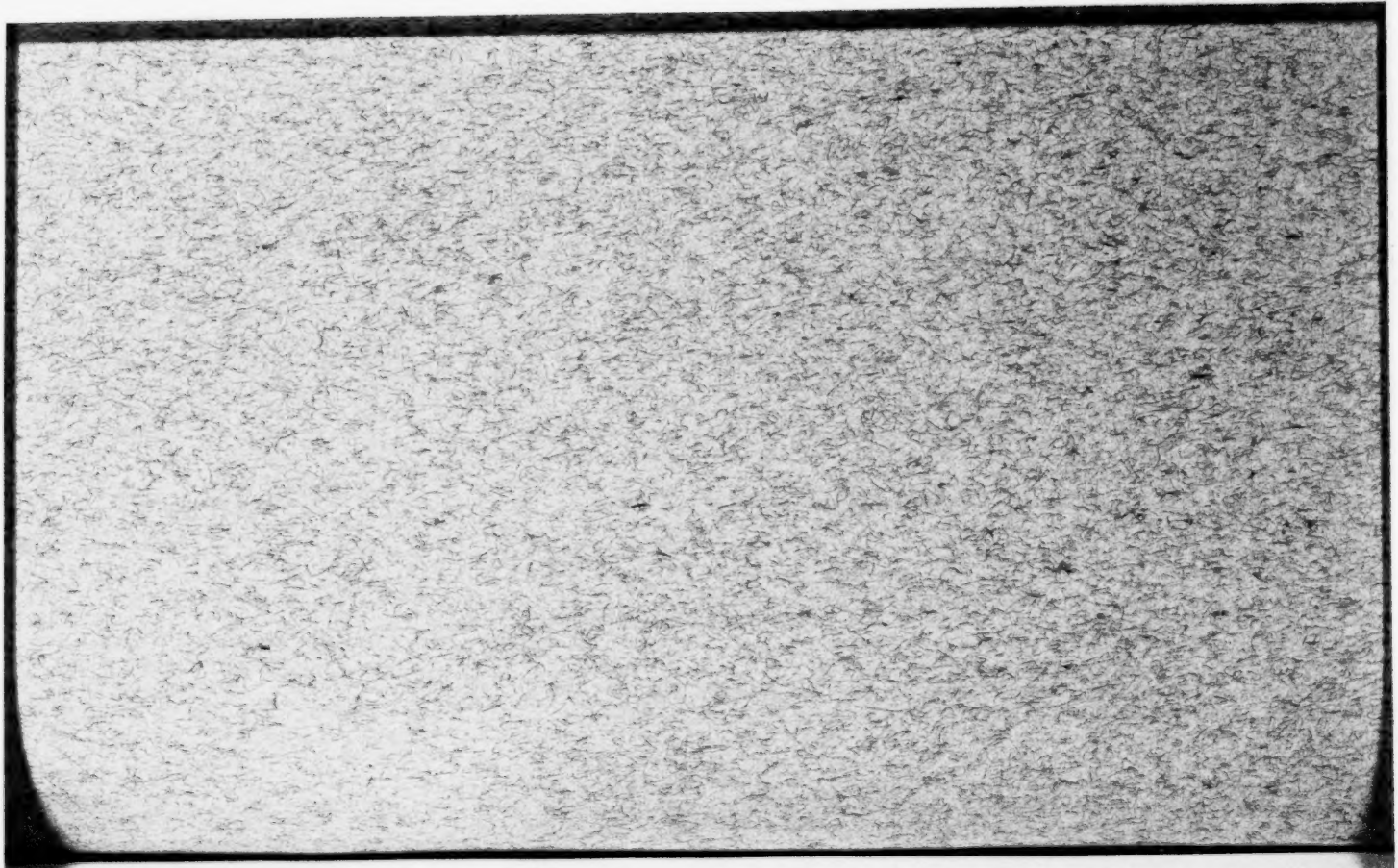
RUSSELL & CO., *Sucrs., S en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, ET AL., *Respondents*.

PETITIONER'S REPLY BRIEF

WILLIAM CATTRON RIGBY,
Colonel, Judge Advocate,
FRED W. LLEWELLYN,
Major, Judge Advocate,
Attorneys for Petitioner.

CHARLES E. WINTER,
Attorney General of Puerto Rico,
WILSON WINSHIP,
The Judge Advocate General
of Counsel.

BYRON S. ADAMS PRINTING CO., INC., WASHINGTON, D. C.



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Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

RUSSELL & CO., *Sucrs., S en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, ET AL., *Respondents*.

PETITIONER'S REPLY BRIEF [1]

INTRODUCTION

Petitioner elected to treat its original petition and supporting brief as its opening brief upon the argument of this case. Respondents having elected to supplement their original brief in opposition to the petition by their further "Brief for Respondents" filed since the granting of the writ, petitioner submits this reply.

FACTS

The "Brief for Respondents" contains erroneous allegations of fact; some in direct conflict with the "agreed statement of facts"; others predicated on illogical and unwarranted infer-

[1] In the Petition for Certiorari and Supporting Brief, the references to pages in the Record were to the transcript of the record as printed in the Circuit Court of Appeals and filed here (10 copies) with the Petition for Certiorari. Those page numbers now appear as *folios* "(*fol.*)" in the Record as now reprinted by the clerk of this court. In this reply brief, references are to the pages of the Record as now reprinted in this Court.

ences; and still others naked assertions without support in the record.

(1) Under the heading "Historical Statement," on page 4 of respondents' brief, it is said that the "avowed purpose" of Puerto Rican Act No. 49 of 1921 is "to compel the respondents to pay a special tax for the water which they receive by way of exchange under the contract with the Government of Puerto Rico as is shown by the first section of the law," etc. A similar statement is on page 35, only differing in that in the latter instance the word "stated" is used in place of "avowed."

These statements are clearly incorrect. Section 1 of Act No. 49, quoted in respondents' brief immediately following the first of the statements in question (p. 4) does not even mention the respondents, much less openly declare or express any purpose whatever with relation to them. It does expressly levy, and therefore might be said to avow or state a purpose to compel payment of a special tax on all lands of a prescribed class, to-wit: lands "which for irrigation purposes are supplied with water from the southern coast public irrigation system * * * but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system." It is true that the lands of the respondent *sociedad* fall within that class, and therefore it might not be too wide a stretch of the words to say that the avowed or stated purpose of the Act is to compel the respondent *sociedad*, with other holders of lands within the prescribed class, to pay the special tax imposed. But that is as far as the "avowed," or openly declared, purpose of the Act can be said to extend.

As to the detailed nature of the benefits for which the prescribed assessments are imposed, the Act is silent, and recourse must be had to reasonable interpretation. Because the Act is one imposing special assessments; because such assessments can be validly imposed only to the extent of benefits derived from some public improvement; and because the Act specifically mentions the southern coast public irrigation

system, defines the class of lands to be assessed as certain of those irrigated from that system, and measures the assessments imposed by the cost of operating and maintaining that system; it follows by necessary implication that the benefits for which the assessments are imposed are those derived by the specified lands from the operation and maintenance of that system.

It does not follow by similar implication that the benefits for which the assessments are imposed consist solely of the waters delivered from the system, or even that those waters were necessarily included at all among the benefits for which the assessments are imposed. A plantation located within the geographical limits of the district, and irrigated from the system, might benefit in many ways other than by the single advantage of itself receiving water from the system. The irrigation of other lands generally throughout the district might reasonably be expected to result in local improvement of roads and communications; betterment of rail, port and other facilities for the marketing of products at home and abroad; increase in local population with better housing and sanitation, with consequent improvement in the local supply of farm labor; and many other conceivable advantages; all tending to enhance the values of, and otherwise specially to benefit lands irrigated from the system, and located within the geographical limits of the district, whether originally included as an organic part of the district or not.

Accordingly respondents are quite in error in saying in their brief that the "avowed" or "stated" purpose of the Act "is to compel the respondents to pay a special tax *for the water which they receive.*" Certainly no such purpose is avowed or stated, and none such is even necessarily inferable.

(2) On page 6 of their brief, under the heading "Statement of Facts," respondents allege that they are co-partners doing business under the firm name and style of Russell & Company, Sucesores, S. en C.

This allegation might be taken to imply that the individual

respondents constitute a general partnership, whereas they constitute (Par. 2, Agreed Statement, R. 60), as the letters "S. en C." in its name show (Art. 146, Code of Commerce, Petitioner's Supporting Brief, p. 81), what is called in Spanish a *"sociedad en comandita."*

(3) On page 6 of respondents' brief, immediately following the allegation last above noted, it is alleged that "The partners own four tracts of land," etc., and that "They sublease * * * two other tracts of land," etc.

Although the agreed statement refers in paragraph 4 to the "defendants" as the owners of four of the tracts (R. 60), and in paragraph 14 to "defendants' predecessors in title" as lessees of the other two tracts involved (R. 64), in paragraph 23 of the same statement it is agreed that it is the "defendant partnership,"—the defendant Russell & Co., Sucesores, S. en C., a *sociedad en comandita* (Par. 2, Agreed Statement, R. 60), as the letters *"S. en C."* in its name indicate),—that is liable for the assessments if the act is valid (R. 67), showing that the prior references to the individual "defendants" last above mentioned were intended as references to the so-called partnership or *sociedad*, and that it is the latter which owns and leases the lands in question, and not the so-called "partners."

(4) On page 14 of respondents' brief, still under the heading "Statement of Facts," referring to Act No. 49 of 1921, it is alleged that the purpose thereof "was to set at naught the contract between the People of Porto Rico and respondents' predecessor in title * * * and to nullify the old Spanish concessions * * * by making the respondents pay a special tax for the construction, maintenance and operation of the irrigation system," etc.

This amounts merely to a statement of respondents' contention that the Act impairs the obligations of the contracts. It is the assertion of a conclusion of law, not of fact. In so far as it implies that the assessments imposed by the Act are in part "for the construction," as well as for the maintenance

and operation of the irrigation system, it is erroneous, because the Act of 1921 omits any mention of construction, or amortization of the cost of construction, and expressly prescribes "the cost of operations and maintenance of the irrigation system during the following fiscal year" as the basis for computation of each annual assessment (Sec. 2, Act of 1921, App. I to the Petition and Supporting Brief, p. 58).

(5) On page 15 of respondents' brief, and as part of their "Statement of Facts," again referring to the Act of 1921, it is alleged that "the Government sought by the law nevertheless to compel them to pay as those others paid who had their concessions condemned or valued by agreement."

This amounts to an allegation that there is no difference between the rate of assessment under the Act of 1921, and that under the Act of 1908 as amended by the Act of 1913. But there is in fact a very substantial difference. As above pointed out, assessments under the Act of 1921 include nothing whatever for construction, being expressly limited to operation and maintenance alone (*supra*, p. 4), while section 11 of the Act of 1913 expressly provides for inclusion of the "interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year" (Petition and Supporting Brief, App. III, p. 69). It will thus be seen that the owners of lands whose prior water rights were only suspended in exchange for equivalent deliveries of water from the system, such as the respondent *sociedad* in the present case, *are not*, as alleged by respondents, *compelled* by the Act of 1921 *"to pay as those others paid who had had their concessions condemned or valued by agreement,"* but enjoy a substantially lower rate of assessment, including *nothing whatever either for new construction or for amortization of the cost of prior construction.*

(6) Again on page 15 of respondents' brief, immediately following the statement last above discussed, it is alleged in substance that the Guayabal Dam and Reservoir could never have been put into operation without the consent of "owners of land having prior concessions recognized as valid," mean-

ing, no doubt, among others, the respondent *sociedad*, or its predecessors.

As petitioner has pointed out in the Supporting Brief (pp. 41-42), this finds no support in the record. True the unextinguished concession holders would have had a right to take certain amounts of water from the bed of the river, and the Government could not without their consent have reduced the natural flow below the amount necessary to provide those amounts. But, as far as the record discloses, this would obviously have left the Government free to impound and distribute through the irrigation system all waters in excess of those amounts. In any event, the question whether the Government could have put the Guayabal Dam and Reservoir into operation without the consent of the owners of unextinguished concessions is wholly immaterial here, because the record shows that the consent of the then owners of the lands here involved was actually obtained in the contracts of August 26, 1914, and the Government has never contended that those contracts were without valid consideration moving to the Government.

(7) Again on page 15 of respondents' brief, immediately following the allegation last above discussed, referring to the lands of the respondent *sociedad* here involved, it is alleged that "none of them received or receive water from the irrigation system," and further that "there is no evidence of any kind anywhere in the record that in the delivery of this water a single facility of the irrigation system is used except that the water of the Jacaguas River to which respondents are entitled and which the Government agreed to deliver is held back by the Guayabal Dam."

This surprising contention, raised here for the first time, is elaborated by the respondents in their Point II (Respondents' Brief, pp. 31-33), hereinafter discussed (*infra*, pp. 27-28). It is sufficient at this point to say that respondents' allegation last above quoted is in positive and irreconcilable conflict with paragraph 27 of their answer (R. 21) wherein they admitted

that the lands in question had received *"from the Southern Coast Public Irrigation System"* such waters as they were entitled to receive; with paragraph 20 of the Agreed Statement (R. 66) wherein respondents expressly agreed that those lands "have been supplied since the year 1915 and are now being supplied with water for the purpose of the irrigation of said lands *from the Southern Coast Public Irrigation System"*; and with paragraph 23 of the Agreed Statement (R. 67), wherein respondents expressly admitted that "the defendant partnership is liable to the plaintiff herein if said Act No. 49 of 1921 is valid."

(8) Again on page 15 of respondents' brief, near the bottom of the page, referring to the six plantations involved in this action, it is alleged that "none of them received the slightest bit of benefit from the irrigation system" because, in substance, the water received from the irrigation system was only the fair equivalent in value of the concessions whose suspension was the consideration for the delivery of that water.

This is an obvious *non sequitur*. As we have already pointed out in the discussion of another of respondents' erroneous statements (*supra*, pp. 2-3), even if the water be held to constitute no benefit to the lands derived from the irrigation system, upon the theory that it was fully paid for by the suspension of the prior water rights under the contracts, nevertheless there were many other possible benefits to those lands from the development, operation and maintenance of the system, whose existence is not only not negatived by anything in the record, but, on the contrary, is in effect affirmed by the legislature in the Act levying the assessments. See also *infra*, pp. 30-31.

(9) On page 20 of respondents' brief, it is alleged that "Petitioner asks this court to overthrow the long established rule that in the federal courts the citizenship of a partnership is for purposes of jurisdiction the citizenship of its individual members."

This is a very grave misstatement of petitioner's position.

The petitioner asks of this court no such thing, as will be readily established by reference to Point I (pages 19 to 39) of petitioner's Supporting Brief. Petitioner finds fault, not with the partnership rule of federal jurisdiction, but with its application to the erroneously so-called "partnership" respondent in this case, which is in fact not a "partnership" in the ordinary sense, but a Puerto Rican civil law *sociedad en comandita,* possessing all of the distinctive characteristics of a corporation.

(10) On page 23 of respondents' brief, it is alleged that petitioner's present contentions as to the complete corporate character and characteristics of the *sociedad en comandita* "run exactly counter to the record," and in support of that statement respondents quote from Paragraph 2 of the Agreed Statement (R. 60), from the original complaint (R. 76), from the amended complaint (R. 1) and from the amended motion to remand, where there are references to the defendant *sociedad* as a "civil agricultural limited partnership."

It is true that in the documents mentioned the official but inaccurate English name of the *sociedad en comandita* was employed, but petitioner's position throughout the whole progress of the case consistently has been in substance that it **makes no difference by what generic statutory name the entity is designated,** because it nevertheless possesses all of the essential characteristics of a corporation within the rule of the *Letson case,* (*cf. Supporting Brief,* p. 33) and therefore is in reality a corporation for federal jurisdictional purposes. See paragraph 1 of the Amended Motion to Remand (R. 9), and the Petition and Supporting Brief in this court, pages 13 and 19-39.

(11) Under Point II, page 31, of respondents' brief, it is asserted that "there is no evidence in the record that the lands of the respondents which it is sought to tax are supplied with water from the southern coast public irrigation system."

This is a reiteration of the error dealt with under (7) above

(*supra*, pp. 6-7), and, as there shown by specific references, is in direct conflict with the agreed facts of the case. See also *infra*, pp. 27-28.

(12) On page 37 of their brief respondents assert that "the People of Porto Rico decided to rob them" (the respondents) "of the fruits of their contract by legislative fiat and passed Act No. 49 of 1921." This extravagant assertion of opposing counsel is so completely without support in the record, and so obviously foreign to any issue before this Court, as to call for no further comment.

(13) On page 40 of respondents' brief it is alleged (italics supplied) that the Act of 1921 attempts to make the respondents "bear a share not only of the cost of maintaining the irrigation system *but also the cost of constructing it*, and not only the cost of maintaining *and building* the Guayabal irrigation project on the Jacaguas River, *but also the cost of maintaining and constructing all of the irrigation and hydro-electric projects on the southern coast of the Island of Porto Rico, from none of which do they receive any benefit.*"

In so far as this allegation asserts that the Act of 1921 charges the lands assessed thereunder with costs of construction, it is positively refuted by Section 2 of that Act (Supporting Brief, App. I, p. 58), from which it will be seen that the assessments thereunder are based expressly and exclusively on "the cost of operation and maintenance of the irrigation system."

In so far as respondents' allegation last above quoted implies that the lands of the respondent *sociedad* here involved derive no benefits from the irrigation system, it is wholly without support in the record. In this connection attention is invited to what is said concerning benefits under (1) above (pp. 2-3).

(14) Again on page 40 of their brief, immediately following the erroneous statement last above discussed, respondents allege that "The law" (Act of 1921) "puts the respondents on

a par with land-owners who receive waters from the irrigation service without ever having owned concessions and puts them at a disadvantage compared with those who had water rights which were condemned for cash or were relinquished for a price credited upon the annual assessment."

The fallacy of this assertion is shown by a simple comparison between Section 2 of the Act of 1921 (Supporting Brief, App. I, p. 58), which, as pointed out immediately above, by necessary inference excludes all cost of construction from the computation of assessments under that Act, and Section 11 of the Act of 1913 (Supporting Brief, App. III, p. 69), expressly including "the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year" in the computation of each annual assessment under the last mentioned act. Thus it clearly appears that those assessed under the Act of 1921 pay no part of the cost of construction, while the lands originally included in the district continue to bear the whole cost of interest and amortization charges upon the bonds representing the cost of the construction of the works. It is reasonable to infer that this important distinction in rates of assessment in favor of the lands assessed under the Act of 1921 was deliberately made by the legislature because of the suspended but unextinguished water rights appurtenant to those lands. In any event the distinction is there, and its existence constitutes complete refutation of respondents' allegation last above mentioned.

(15) On pages 44-45 of respondents' brief, it is alleged that the assessments imposed by the Act of 1921 are "imposed solely because of the enjoyment of the respondents of rights under contracts with the People of Porto Rico," and that "In the case at bar the Legislature is attempting to take away with one hand what it has contracted to give with the other."

These are substantial repetitions of prior allegations whose fallacy has already been indicated (*supra*, pp. 1-3, 7).

(16) On page 73 of their brief respondents assert that "The Government agreed when it made the contracts that the only benefit which the concession holders would obtain from the construction of the Guayabal Dam was in more uniform delivery of water"; and further that "the respondents' predecessors and their lessors received no legal benefit from the construction of the irrigation system for which they could be taxed by a special assessment"; and further that "The contracts by their very words bar all consideration of actual or legal benefit."

Although it is true that the contracts dealt only with the water rights and their suspension in exchange for equivalent deliveries of water from the system, they contain nothing whatever to support this contention of the respondents. Nothing whatever was said and nothing could legally have been said in the contracts about possible benefits to the lands described, other than those incident to the stipulated deliveries of water to those particular lands, or about possible future assessments on account of such other benefits. Those were matters wholly outside the authorized purpose and scope of the contracts, as shown by the authorizing statute, Sec. 13 of the Act of 1913 (Supporting Brief, App. III, p. 75). And as to the existence of such other benefits, attention is again invited to the discussion under (1) above (pp. 2-3).

(17) On page 89 of respondents' brief, it is contended (italics supplied) that "the tax attempted to be levied by Act No. 49 of 1921 was aimed *solely* at the land owned and leased by respondents."

As far as the word "solely" is concerned, the record discloses no support for any such contention.

(18) On page 89 of their brief, respondents again reiterate their contention that "respondents' property" (referring to the lands of the respondent *sociedad* here involved) "is in no wise benefited by the irrigation system."

As above pointed out (*supra*, pp. 2-3), the record discloses

no evidence in support of that contention, and it is in effect refuted by the Act of 1921, which, in effect, constitutes a conclusive legislative declaration that the lands in question are specially benefited at least to the extent of the assessments imposed.

ARGUMENT

RESPONDENTS' POINT I
THE JURISDICTIONAL QUESTION

A. Although respondents continue to insist that the District Court of the United States for Puerto Rico had jurisdiction of this case upon the ground of diversity of citizenship, yet nowhere in their brief do they point out a single essential in which the characteristics of a *sociedad en comandita* differ from those of a private corporation. They make no real attempt to controvert petitioner's position that the *sociedad en comandita* possesses all of the essential characteristics of a corporation and should therefore be treated as a corporation for federal jurisdictional purposes (Supporting Brief, pp. 19-39).

(1) As above pointed out ("Facts", "(9)" and "(10)", *supra*, pp. 7-8), respondents' statements that petitioner "asks this court to overthrow the long established rule that in the federal courts the citizenship of a partnership is for purposes of jurisdiction the citizenship of its individual members" (Respondents' Brief, p. 20), and that petitioner's position "runs exactly counter to the record" (Respondents' Brief, p. 23), are grave misstatements of petitioner's position. Those statements in respondents' brief are seriously erroneous.

(2) Respondents rely (Brief, p. 20) on this Court's denial of certiorari in the case of *People of Porto Rico* vs. *Fortuna Estates* (259 U. S. 587). But, as was pointed out in petitioner's supporting brief (p. 26 and Footnote "6" at the bottom

of that page) the jurisdictional question here involved was not really involved in that case; because, as the Circuit Court of Appeals itself there held (279 Fed., at pp. 503, 504) *federal jurisdiction existed in that case in any event.* **The question here presented was there wholly moot.**

(3) Respondents say (Brief, p. 21) of the decision in the case of *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong*, 14 Fed. 615,

> "a Louisiana case, but that case was *expressly repudiated* by the same court in *Empire Rice Mill Co.* vs. *Neumond*, *supra*. Both of these cases dealt with the civil law concept of a partnership as distinct from a common law concept." (*Italics supplied.*)

Respondents' statement is in the nature of a "dangerous half truth." The case of *Empire Rice Mill Co.* vs. *Neumond*, 199 Fed. 800, is discussed on page 37 of Petitioner's Supporting Brief. As there pointed out the Louisiana *"société"*, as interpreted by the court in that case, appears to differ from the Puerto Rican *"sociedad en comandita"* in that under the Louisiana Law (*Empire Rice Mill Co.* vs. *Neumond, supra*, at page 803) judgment may be "rendered against the firm and the partners *in solido*"; which is not true in a suit against a Puerto Rican *sociedad en comandita*. Furthermore, it is not accurate to say, as respondents do, that the *Empire Rice Mill Co.*, vs. *Neumond* case "expressly repudiated by the same court" the earlier case of *Liverpool, Brazil & River Platte Navigation Co.* vs. *Agar & Lelong, supra*. The judgments in the two cases were by two different district judges. It is simply an instance of the second district judge differing in opinion from the district judge who decided the earlier case. Neither case was taken to a higher court. The earlier case was decided by Judge Billings upon a careful analysis of the character of the *société* under Louisiana laws. Judge Foster, in the *Empire Rice Mill Co.* case relied upon the *Great Southern*

Fireproof Hotel Co. case, *supra*,[1] which had been decided by this Court in the meantime. But, in any event,—if Judge Foster's construction of the Louisiana laws, in the *Empire Rice Mill Co.* case (199 Fed., *supra*, at p. 803) that "the members may be joined in the same proceeding, and judgment rendered against the firm and the partners *in solido*," is correct,—then the Louisiana cases have no real bearing here, because of the difference above noted, and which was pointed out in petitioner's supporting brief (p. 37) between the Louisiana laws and those of Puerto Rico. In a suit against a Louisiana *société* it appears that the individual partners are really parties to the suit, because the judgment can be rendered against the firm and the partners *in solido*. Whereas, in a suit such as the one at bar against a Puerto Rican *sociedad en comandita*, the *sociedad* is the only party defendant to the suit; because the judgment runs only against it, and not against its members individually, nor against them *in solido* with the *sociedad*.

(4) Respondents say that (Brief, p. 22):

> "Porto Rican limited partnerships are no different in the respects pointed out above from limited partnerships in the United States. All of the things which may be done in the articles of a limited partnership in Porto Rico may be done in many of the States of the Union,"

and respondents cite in support of that statement statutes of New York, Massachusetts, New Jersey, and Pennsylvania. The statutes which respondents cite are quoted in Appendix I to this brief (*infra*, pp. 33-40). They do not bear out respondents' statement.

To the contrary, examination of them shows that, in all of those States,—*including Pennsylvania*—the "limited partnership" is simply the ordinary partnership of the common law, a group of individuals doing business in a firm name, with

[1] *Great Southern Fire Proof Hotel Company* vs. *Jones*, 177 U. S. 449. See Petitioner's Supporting Brief, pp. 28-35.

only the added element of the contribution of certain amounts of property or money by silent partners who (except as to the capital which they thus adventure) are not liable for the debts of the firm any more than though they had loaned their money to the partners and taken promissory notes for it. Such a partnership is not a juridical person, and does not have the essential elements of a corporation, or "corporate body," as those elements were stated by this Court in the *Letson* case.

The striking thing **illustrated by these "limited partnership" statutes which respondents cite** ***is the sharp line of cleavage*** **which they show** between such true "limited partnerships" which are not corporate bodies nor juridical persons, on the one hand, and on the other hand such corporate bodies as the "partnership association" of Pennsylvania, one of which was before this Court in the *Great Southern Fireproof Hotel Co.* case, *supra*. **The Pennsylvania statutes providing for the "partnership association" are wholly different from those providing for the limited partnership** and are found under a different heading in Purdon's Digest (2 Purdon's Digest, 13th Ed., pp. 2023-2030). New Jersey also provided for such a "partnership association", —a corporate body,—by statute in 1880, nearly fifty years after the date of its "limited partnership" statute, and clearly differentiated it in every respect from the limited partnership. Its "partnership association" statute (Pub. Laws of 1880, p. 304; Compiled Statutes of New Jersey of 1911, Vol. 3, pp. 3921-3924) is closely modeled upon the Pennsylvania "partnership association" statute.

Likewise in yet another State, Michigan, there exist side by side the "limited partnership" and the corporate body, the "partnership association", clearly differentiated from each other. (*"Limited Partnerships"*, Compiled Laws of Michigan, 1929, Secs. 9885-9908, tracing back to the Compiled Laws of Michigan of 1857; pertinent portions quoted in Appendix I, *infra*, pp. 38-40; and *"Partnership Associations"*, Act No. 191

of 1877, now, with amendments, become Sections 9909-9928, Compiled Laws of Michigan, 1929; pertinent portions quoted in Appendix II, *infra*, pp. 45-47).

Clearly marking the distinction between these two wholly different types,—the "limited partnership" on the one hand, merely a form of the familiar common law partnership, not a juridical person, and not possessing the essential elements of a corporate body as enumerated by this Court in the *Letson case*; and on the other hand the "partnership association", a true corporate body,—the pertinent portions of the statutes cited by respondents relating to "limited partnerships" in New York, Massachusetts, New Jersey, and Pennsylvania, and also those of the State of Michigan, are collected in Appendix I of this brief, *infra*, pp. 33-40; and the statutes of Pennsylvania, New Jersey and Michigan providing for the "partnership association" are likewise collected in Appendix II, *infra*, pp. 41-47.

Very few, if any, of the States of the Union other than those three, Pennsylvania, New Jersey and Michigan, except Virginia and Ohio have provided for such "partnership associations."[1] It is especially noteworthy that the Supreme Court of Michigan has held that its statute concerning "partnership associations" is "almost an exact reprint of the Pennsylvania Act of 1874" (*Rouse, Hazard & Co.* v. *Donovan, Wayne Circuit Judge*, 104 Mich. 234, 238, 62 N.W. 359[1]); and that *the law governing corpora-*

[1] The Supreme Court of Michigan said in this case:

"Pennsylvania, in 1874, enacted the first law in this country for the organization of limited partnership associations. In 1877 the legislature of Michigan passed an act similar in all essentials to that of Pennsylvania. It is an almost exact reprint of it. The Pennsylvania act first required the capital stock to be paid in cash. It was afterwards amended so as to permit contributions to be made in real or personal estate. Virginia, New Jersey,

tions, rather than the law governing partnerships, is applicable to such a "partnership association." *Armstrong* v. *Stearns*, 106 Mich. 604, 121 N.W. 312, 314; *Rouse, Hazard & Co.* v. *Detroit Cycle Co.*, 111 Mich. 251, 69 N.W. 511, 512, 513; *Staver & Abbott Mfg. Co.* v. *Blake*, 111 Mich. 282, 69 N.W. 508, 510.

"The Detroit Cycle Company, Limited, filed its articles in the office of the register of deeds for Wayne County, Michigan, as a limited partnership association" (at p. 512) * * *. Nearly all the questions involved in this proceeding are involved in the case of *Staver & Abbott Mfg. Co.* v. *Blake*, (decided at the present term of this court) *supra*. It will not be necessary to refer to the opinion in that case further than to say that, *so far as the question of whether the law of limited partnerships applies to the defendant association, or the law of corporations, the answer is that the case must be controlled by the law applicable to corporations*," (p. 513). (*Italics ours.*)

Rouse Hazard & Co. v. *Detroit Cycle Co.*, 111 Mich. 251; 69 N.W. 511, 512, 513.

"These defendants have never agreed to be partners, and have never held themselves out to plaintiff or to the world as such. By the purchase of stock, they became members of a body, organized under a law, which made its capital and assets alone liable for its debts. This is a legal entity—*and it is immaterial what name you give it*—with which the plaintiff dealt, made contracts, and to which it gave credit. * * * It is unnecessary to determine whether these associations are corporations under our Constitution * * *. *There is no difference in principle between the two.* Each is a legal entity, whose sole warrant

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and Ohio enacted the same law in 1875, 1880, and 1881, respectively." (104 Mich. 238; 62 N.W. at p. 360.)

The Virginia act was carried into chapter 135 of the code of that State of 1887 and may be found in Sections 2878 to 2886 of Pollard's Code of Virginia of 1904. It appears to have been comparatively little used, and was repealed by Section 4359 (76) of the Code of 1930.

The Ohio act is still in force. Sections 8059 to 8078, Vol. 2, General Code of Ohio (Page's "Revised Ed." of 1921).

for existence is found in, and whose powers and liabilities are fixed by, statute. * * * The policy of the law for partnership associations, limited, is to relax the common law rule, to permit parties to limit their liability and exempt themselves from a liability which may be ruinous." (*Italics supplied.*)

Staver & Abbott Mfg. Co. v. *Blake*, 111 Mich. 282; 69 N.W. 508, 510.

And it has become, by repeated decisions, the settled doctrine of the Supreme Court of Michigan that:

"Partnership associations limited are governed by the principles applicable to corporations."

Goodspeed v. *Hally*, 199 Mich. 273; 165 N. W. 943, 945 (December 27, 1917).

Union Trust Co. v. *Detroit Common Council*, 170 Mich. 692; 137 N.W. 122, 125.

Sanitas Nut Food Co. vs. *Force Food Co.*, 124 Fed. 302.

Fargo v. *Powers*, 220 Fed. 697, 708.

Re *Caledonia Coal Co.*, 254 Fed. 742, 746.

(5) Respondents further, after citing (Brief, pp. 20-21) the cases of *Chapman* v. *Barney, supra, Great Southern Fireproof Co.* v. *Jones, supra*, and other cases which they say sustain their contention that it is immaterial for federal jurisdictional purposes whether or not the *sociedad en comandita* possesses all the essential elements of a corporation, assert that (Brief, p. 21):

"The only decision contrary"

is the case of *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong, supra*, the Louisiana case above discussed.

Here again respondents are gravely in error. Prior to the decision of this Court in the *Great Southern Fireproof Hotel Co.* case, *supra*, in the year 1900, there had been at least three other opinions in which federal circuit courts, and the Circuit Courts of Appeals of the Second and Sixth Circuits, had sustained the federal jurisdiction in cases arising in New York and Ohio circuits

where Pennsylvania "partnership associations" were parties, on the ground of diversity of citizenship. In each of those cases the federal circuit courts and the Circuit Courts of Appeals had expressly held that such Pennsylvania "partnership associations" do possess the essential elements of corporations, and were to be treated as corporations for the purposes of federal jurisdiction. Those are the cases of

Bushnell v. *Park Bros. & Co.*, 46 Fed. 209 (Cir. Ct.) Southern Dist. N. Y., May 1, 1891; LACOMBE, Circuit Judge).

Same case affirmed (accepting the jurisdiction without discussion), 60 Fed. 583 (C. C. A., 2nd Cir., March 12, 1894, before WALLACE, LACOMBE and SHIPMAN, Circuit Judges).

Youngstown Coke Co., Ltd. v. *Andrews Bros. Co.*, 79 Fed. 669, at pp. 669 to 676 (Cir. Ct., Northern Dist. Ohio, April 14, 1897; SAGE, District Judge).

Andrews Bros. Co. v. *Youngstown Coke Co.*, Ltd., 86 Fed. 585, 586 to 596 (the same case, with title reversed, in which Judge SAGE had delivered the opinion, *supra*, in the Circuit Court; C. C. A., 6th Circuit, April 11, 1898; TAFT and LURTON, Circuit Judges, and CLARK, District Judge; opinion by LURTON, J.).

JUDGE LACOMBE'S opinion in the Circuit Court in *Bushnell* v. *Park Bros. & Co., Ltd.*, *supra*, closed with the conclusion that:

> "For the purposes of this suit the defendant must therefore be considered to be a Pennsylvania corporation, and as such has the right to remove." (46 Fed. 209, *supra.*)

JUDGE SAGE concluded his opinion in the Circuit Court in *Youngstown Coke Co., Ltd.* v. *Andrews Bros. Co.*, *supra*:

> "It is clear that the plaintiff company is endowed with all the essential characteristics of a corporation, and that, for the purposes of jurisdiction, it must be regarded as such." (79 Fed. 669, *supra*, at p. 676).

And Circuit Judge LURTON in his opinion in the Circuit Court of Appeals, Sixth Circuit, in which Circuit Judge TAFT (as he then was) as well as District Judge CLARK, concurred, in *Andrews Bros. Co.* v. *Youngstown Coke Co., supra,* after a very careful examination of the Pennsylvania statutes concerning these "partnership associations," concluded:

> "Our conclusion, therefore, is that the Youngstown Coke Co. is a corporation and a citizen of Pennsylvania, within the meaning of the jurisdictional requirement in respect to diversity of citizenship." (86 Fed. *supra,* 585, at pp. 595-596).

And in line with those decisions there was also the analogous holding to which respondents advert on page 21 of their brief, of District Judge BILLINGS, in the Circuit Court for the Eastern District of Louisiana in December, 1882, in *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong,* 14 Fed. 615, 616-617, *supra,* in which Judge Billings after referring to the decisions of this Court in the *Letson* case and the *Whitton* case (*Louisville R. R. Co.* v. *Letson, supra,* 2 How. 554; and *Railway Co.* v. *Whitton,* 13 Wall. 283), that a corporation is, so far as relates to the enforcement of rights of action by suit in the federal courts, a citizen of the State under whose laws it is organized, although some of the incorporators might not be within that jurisdiction, said:

> "The reasoning which leads to this conclusion, with reference to corporations, leads to the same conclusion with reference to Louisiana commercial partnerships." (14 Fed. *supra,* at p. 616).[1]

[1] None of these decisions were called to the attention of this court by counsel in the *Great Southern Fireproof Hotel Co.* case, as appears from the "Supplemental Memoranda for Respondents" in that case, filed March 24, 1900, copied in Appendix IV, pp. 91 to 93, of Petitioner's Supporting Brief herein. Nor is any of them mentioned in the opinion of this Court in the *Hotel Co.* case. (177 U. S. 449, *supra*).

This Court decided that case without having had called to

(6) Respondents urge (Brief, pp. 22-23) that law writers and translators of the Codes habitually translate the Spanish word *"sociedad"* and the analogous French word *"société"* into English by the word *partnership*. That is, of course, true; and equally of course is simply another illustration of the difficulties met in translating from one language into another, particularly in translating words representing certain definite legal concepts in one language into another language which contains no words representing exactly the same legal concepts. Respondents do not attempt to question the accuracy of petitioner's statements of the characteristics of the Spanish (and Puerto Rican) *"sociedad,"* and of its inherent difference from the English common law concept of "partnership." The one inherently means an artificial entity, a juridical person. The other inherently means a group of individuals doing business under a firm name, with no juridical personality separate from that of the individuals. In the nature of things the one word is not and cannot be an accurate translation of the other. The attempt to render the Spanish into ordinary English words is the thing that has been responsible for the confusion in the decisions of the federal District Court of Puerto Rico and of the Circuit Court of Appeals, First Circuit, upon the jurisdictional question here involved. The reasoning has run simply: The official translation of *"sociedad"* is "partnership"; it so appears in the official English text of the Codes. But a "partnership" is simply a

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its attention in any way, or apparently realizing, that in holding that Pennsylvania "partnership associations" were, for jurisdictional purposes of the federal courts, to be treated as ordinary partnerships, instead of as corporations, it **was directly overruling the decisions** of two Circuit Courts of Appeals,—those of the Second and Sixth circuits,—as well as of two Circuit Courts, those for the Southern District of New York and for the Northern District of Ohio, and in effect also that of the Circuit Court for the Eastern District of Louisiana.

group of individuals doing business under a firm name; it is the established rule that federal jurisdiction over a "partnership" is determined by the domicile of the partners. *Ergo*, federal jurisdiction over the Puerto Rican *"sociedad"* is determined by the domicile of its members. That seems easy and plain. It forgets only the tricky difficulties of translation. Habitual translation to the contrary notwithstanding, the Puerto Rican *"sociedad"* is not a common law "partnership."

(7) Respondents ask (Brief, p. 23):

> "Can it be, as inevitably follows from petitioner's contention, that there is under the civil law no partnership of any kind?"

The answer is plain; and is, it is believed, well understood. Under the civil law the "partnership" in the common law sense of individuals simply doing business together under a firm name is not the usual thing. It may, however, exist. Article 1571 of the Civil Code of Puerto Rico (quoted on p. 83, Appendix IV, Petitioner's Supporting Brief) provides that the *sociedad* does not have juridical personality if the contract creating it is kept secret among its members and if each of the members contracts under his own name with third persons, and that

> "This kind of *sociedad* shall be governed by the provisions relating to property held in common."

(8) Respondents say (Brief, p. 26) that a Puerto Rican partnership with share capital is more like a joint stock association than a corporation. Presumably respondents refer to the kind of *sociedad* which is denominated *sociedad anónima* (Puerto Rican Code of Commerce, Art. 122, par. 3; quoted on pp. 80-81, Appendix IV, Petitioner's Supporting Brief). But that very kind of *sociedad* is ordinarily picked out for translation into English by the word *"corporation"* (e.g. official English translation of the Puerto Rican Code of Com-

merce, Art. 122, par. 3; quoted p. 80, Petitioner's Supporting Brief; although the *sociedad en comandita* is equally a juridical entity. They are both given "juridical personality", and created "juridical persons" by the same sections of the Codes (Code of Commerce, Art. 116; Civil Code, Art. 27 (2); quoted in App. IV, pp. 79, 81-82, Supporting Brief). Respondents' statement that it is "more like a joint stock association than a corporation" is erroneous. A joint stock association as ordinarily known in the United States and England is not a juridical person. That lack of juridical personality is its essential characteristic; and it was because of that very characteristic,—the lack of juridical entity,—that this Court, in *Chapman* v. *Barney*, 129 U. S. 677, 682, upon which respondents rely (Respondents' Brief, p. 26, *supra*), held that such a joint stock association was "a mere partnership" in the common law sense of the term. **It is wholly different from the Puerto Rican *sociedad*, which does have juridical personality.**

The New York courts have expressly held that a "joint stock association" organized under the laws of that State *does not possess juridical personality* separate from that of its members. It is not a juridical person. The Court of Appeals has said:

> "The creation of the corporation necessarily destroys the common-law liability of the individual members for its debts, and requires at the hands of the creating power an affirmative imposition of new personal liabilities or a specific retention of old ones from the destruction which would otherwise follow. Exactly the opposite is true of joint-stock companies. Their formation destroys no part or portion of their common-law liability for the debts contracted. Those debts are their debts for which they must answer." *People* v. *Coleman*, 133 N. Y. 279, 281; 31 N. E. 96, 97 (1892).

And the Appellate Division, First Department, has said:

> "A corporation is an artificial entity, existing in contemplation of law in the state of its creation. It can

have no existence elsewhere and is recognized in other jurisdictions only by comity * * *. Whereas *a joint stock association,* though it have some of the rights of a corporation and may sue and be sued in the name of its president, still *does not exist as an entity distinct from its members.*" *Matter of Willmer,* 153 App. Div. 804; 138 N. Y. Supp. 649 (1912).

(9) Respondents say (Brief, p. 26) that:

"Porto Rico like the States of the United States has true corporations (Corporation Law of Porto Rico, Compilation of Revised Statutes and Codes of Porto Rico, p. 28)."

It is true that, since the American occupation, by Puerto Rican Act No. 30 of March 9, 1911, provision has been made for the organization of "private corporations," *eo nomine,* of various kinds. This permits residents of the continental United States desiring to do business in the Island to organize there under a form of statute such as that to which they are accustomed in the States of the Union. It thus provides a method of organization alternative to that known to the civil law. It is not a part of the civil law system. It is not seen how it has any bearing on the questions here involved.

(10) Respondents say (Brief, p. 25) that petitioner's quotation from the decision of the Supreme Court of Puerto Rico in *People* v. *Rivera Zayas,* District Judge, 29 P. R. Rep. 423, is *"inapposite",* and that the Supreme Court of Puerto Rico *"wrote an opinion in a matter which did not concern it."* Respondents' statement is manifestly erroneous. The opinion of the insular Supreme Court was written in deciding adversely to the contention of the members of this very *sociedad,* a petiton for certiorari to reverse the order of the insular district judge allowing them to inject themselves into a suit begun against the *sociedad* alone in the insular district court, for the purpose of petitioning for its removal to the federal court. Petition for certiorari to the insular Supreme Court necessarily involved, directly, the question whether or not a

suit begun against the *sociedad* alone was really a suit against its individual members so as to make them "parties" to the controversy involved. The insular Supreme Court decided that contention against them, and in so deciding it, directly held that an action begun, as was the one here at bar, in an insular district court, in which the plaintiff's complaint names as the sole defendant a *sociedad en comandita,*—in the *Rivera Zayas* case this very same *sociedad* involved here, RUSSEL & Co., S. *en* C.,—is an action against the artificial person, the *sociedad,* alone; and is not an action against its individual members. That the *sociedad* is to be deemed the sole party defendant to the suit, and that the judgment will not run against the individual members. And, in so deciding, the Supreme Court of Puerto Rico said, as already quoted on page 23 of Petitioner's Supporting Brief,

> "We think that the five or six individual members who form this *Sociedad en Comandita* would be the first to disclaim that they were collectively and individually responsible for all the acts of the *Sociedad en Comandita.* We hold, however, that a *sociedad en comandita* is an entity distinct from the members that compose it.
>
> "In order that a suit may be removed * * * *it is only the parties to a suit who can petition for removal.* The person or entity sued in this case was Russell & Co. It was the essential and only party defendant to the suit. Any existing obligation was between the People of Porto Rico and Russell & Co., and these individual members can not change the nature of the obligation by asking to be made parties."
>
> *People* v. *Rivera Zayas, supra,* 29 P.R. 423, 430-431.

B. As a further ground for federal jurisdiction herein respondents now argue that this case is one of a civil nature arising under a law of the United States. Thus, they urge, it comes within the jurisdiction of federal district courts as defined by Section 24 of the Judicial Code. Their argument (Resp. Br., pp. 27 *et seq.*) rests mainly on their contention

that the action was brought under the Act of Congress of April 23, 1928 (45 Stat. 447), quoted on pages 5 and 6 of respondents' brief.

Petitioner concedes that this case falls within the purview of that Act of Congress and that petitioner is thereby restricted to an action at law as the only means of enforcing payment of the assessments in question. But it cannot logically be said that this is a suit "arising" under that act within the meaning of Section 24 of the Judicial Code; because *the Insular Government had an inherent right to proceed for the collection of any tax or assessment by action at law if it saw fit to adopt that method of procedure,* and therefore the effect of the Act of Congress of 1928 was not in any real sense to create the right of action herein asserted by the Insular Government, but *its effect was merely to restrict the Insular Government* to its already existing right to proceed by action at law in the class of cases described in the Act. It merely forbade the Insular Government from using other, more summary, remedies. The right to bring, or to maintain, the present action is in no way dependent on that Act. It does not arise under it.

It should also be noted that no question as to the interpretation or application of that Act of 1928 has arisen in the case, it being expressly stipulated in the Agreed Statement of Facts that the defendant is liable for the assessments claimed in the complaint *if Puerto Rican Act No. 49 of 1921 is valid* (R. 67, Par. 23).

C. In further support of their argument that this case arises under federal laws, respondents also advance the bald assertion that, because the People of Puerto Rico is a political entity constituted by federal statute, therefore, any suit brought by that entity is necessarily, because of that fact alone, one which arises under the Constitution or laws of the United States (Resp. Br., pp. 27-28). Respondents cite no authority in support of this novel proposition, and none has been discovered by counsel for the petitioner.

If, as in effect here contended by respondents, every suit brought by or against any territorial government within the United States is necessarily a suit arising under the Constitution and laws of the United States, and therefore within the jurisdiction of the federal courts for the sole reason that the territorial government is a political entity created and empowered by Act of Congress, then it would follow by precisely similar reasoning that every action by or against any state, excepting perhaps the original thirteen, would have to be similarly regarded, for each state created and admitted to the Union since the adoption of the Constitution has been so created and admitted under provisions of the Federal Constitution and Acts of Congress.

In further reply to so revolutionary a doctrine it seems sufficient to cite the principles so well settled by this Court, that, for federal jurisdictional purposes:

(1) A suit is not one arising under the Constitution or laws of the United States unless it really and substantially involves a controversy as to the effect or construction of the Constitution or some law or treaty of the United States on the determination whereof the result depends; and

(2) This must fairly appear on the face of the record at the time when federal jurisdiction is assumed.

Metcalf v. *Watertown*, 128 U. S. 586, 588-590.
Florida Central etc. R.R. Co. v. *Bell*, 176 U. S. 321, 327-328.
Shoshone Mining Co. v. *Rutter*, 177 U. S. 505-509.
Defiance Water Co. v. *Defiance*, 191 U. S. 184, 190-194.
Devine v. *Los Angeles*, 202 U. S. 313, 334.
Louisville and Nashville R.R. Co. v. *Mottley*, 211 U. S. 149, 152-154.
Barnett v. *Kunkel*, 264 U. S. 16, 19-21.

RESPONDENTS' POINT II

APPLICATION OF ACT OF 1921 TO LANDS IN QUESTION

In their present brief, for the first time in this case, respondents attempt to raise an issue as to whether the insular Act

of 1921 applies at all to the lands of the respondent *sociedad* described in the complaint. They now contend in substance that even if the Act be held valid as against the diversified attack made upon it in this case, nevertheless the lower courts were right in giving judgment against the petitioner, because, they contend, there is nothing in the record to show that the lands in question are receiving, or ever did receive, any water from the southern coast public irrigation system (Resp. Br., pp. 31-33).

As we have clearly shown above under the heading "FACTS" (*supra*, pp. 6-7), this contention is in direct conflict with specific stipulations of the Agreed Statement of Facts (R. pp. 21, 66, 67), and calls for no further reply.

PAIRMENT OF NTRACT.

RESPONDENTS' POINT III

IMPROPER DELEGATION OF LEGISLATIVE POWER

The only substantial parts of respondents' argument on this point (Resp. Br. pp. 34-46), not anticipated and fully answered in petitioner's discussion of the same matter (Petition and Supporting Brief, Point III, pp. 50-56), are, we believe, those comprised in certain erroneous allegations of fact with which we have already sufficiently dealt above under the heading "FACTS," subdivisions (1), (12), (13), (14) and (15) (*supra*, pp. 1-3, 8-9, 9-10 and 10).

RESPONDENTS' POINT IV

RULE OF UNIFORMITY OF TAXATION

Respondents contend at great length that Act No. 49 of 1921 violates the requirement of the Organic Act that the rule of taxation in Puerto Rico must be uniform (Resp. Br., pp. 46-77).

The gist of respondents' argument on this point seems to be that the insular act mentioned cannot be sustained as a special assessment act, because, it is contended, there is no special benefit corresponding to the assessments imposed; there-

fore, it is urged, it must be treated as an act of general taxation, and, as such, is void under the Organic Act because not uniformly applicable to all lands in Puerto Rico.

It is apparent that this whole proposition is based upon the premise that there is no corresponding benefit for the assessments imposed by the Act. But, as we have already shown, that premise rests solely upon assertions of counsel for respondents, wholly unsupported by the record, and is, in effect, refuted by the Act itself, which by reasonable implication constitutes a conclusive declaration by the Legislature that the lands assessed are benefited by the improvement therein mentioned, at least to the extent of the assessments imposed (*supra*, pp. 2-3, 7).

RESPONDENTS' POINT V
DUE PROCESS OF LAW

Again respondents' whole argument to the effect that Act No. 49 of 1921 deprives the respondents of property without due process of law (Resp. Br. pp. 78-85) is built upon their erroneous contention that that Act imposes assessments without corresponding benefits, a contention which we have shown to be absolutely untenable on the present record.

RESPONDENTS' POINT VI
EQUAL PROTECTION OF THE LAWS

Respondents' argument that the insular enactment under examination denies them the equal protection of the laws (Resp. Br., pp. 86-90), is predicated upon first, an unsupported assertion of counsel that the act "was aimed solely at the land owned and leased by the respondents," and second, a reiteration of their claim that the act imposes assessments without corresponding benefits (*Id.* p. 89).

We have already shown the fallacy in each of these contentions (*supra*, pp. 11 and 2-3). The argument falls with its unsound premises.

RESPONDENTS' POINT VII
THE TREATY OF PARIS

Respondents argue that the People of Puerto Rico is obligated under the Treaty of Paris, by which Puerto Rico was ceded to the United States, to respect vested rights acquired by inhabitants of the ceded territory under the Spanish regime, and that Act No. 49 of 1921 violates that treaty because, it is claimed, it is confiscatory of rights so acquired (Resp. Br., pp. 90-92).

This argument is clearly redundant, because it depends entirely upon first establishing that the Act is in fact confiscatory, or in other words that the Act is invalid on at least some one of the other grounds urged against it. If the Act constitutes a valid exercise of the power vested in the insular Legislature, then of course it is not confiscatory and there is no conflict with the Treaty, for the Treaty contains no agreement on the part of the United States to refrain from taxing property or rights acquired under the Spanish regime.

RESPONDENTS' POINT VIII
NOTICE AND HEARING

Respondents argue that Act No. 49 is void because it does not provide for any hearing or appeal before the taxes become fixed (Resp. Br., pp. 92-94).

True the Act does not make such provision. Nor did the New York Act under examination by this Court in *Spencer* v. *Merchant*, 125 U. S. 345, except in the matter of apportionment, which by that Act was delegated to the county supervisors; and it was the absence of such provision that was urged against the validity of the Act in that case; but this Court held that where the Legislature itself had by enactment specified the lands benefited, its action as to that subject was conclusive and beyond review. By the same reasoning it follows that where, as in this case, the apportionment of an assessment is definitely prescribed by the Legislature in

the act imposing the assessment—reduced to a mere mathematical computation by rules leaving no discretion whatever to administrative agents—the action must as to that subject also be equally conclusive. There was, therefore, in this instance, no occasion for any notice and hearing prior to incidence of the assessments.

As for review and appeal, ample provision therefor existed and still exists in the general laws of Puerto Rico. We refer here to Sections 308 and 310 of the Political Code of Puerto Rico, being Sections 2960 and 2962 of the "Compilation of the Revised Statutes and Codes of Puerto Rico in force on March 9, 1911." These general statutes authorize appeals to the insular Board of Review and Equalization against any assessment of real or personal property, and final hearing and determination of such appeals by that Board.

Express provision is also made in the Act of the Puerto Rican Legislature approved March 9, 1911, comprising Sections 2989 to 2993, inclusive, of the same compilation last above mentioned, authorizing payment under protest, and suit against the insular Treasurer for recovery of any revenue alleged to be due the Government of Puerto Rico from any person.

It was therefore unnecessary to make special provision in the Act of 1921 for notice, hearing or appeal, and the validity of that Act is not affected by its lack of such provisions.

RESPONDENTS' POINT IX

IMPROPER DELEGATION OF LEGISLATIVE POWER

This point was fully discussed in the Petition and Supporting Brief (Point III, pp. 50-56).

CONCLUSION

Petitioner respectfully submits that the District Court of the United States for Puerto Rico was without jurisdiction of

this case, and that this Court should reverse the judgment of the Circuit Court of Appeals, and order the case remanded to the insular District Court in which the action was begun; but in event this Court should sustain the jurisdiction of the United States District Court for Puerto Rico, it is respectfully submitted that the judgment of the Circuit Court of Appeals should nevertheless be reversed, and this Court should direct judgment for the petitioner.

WILLIAM CATTRON RIGBY,
Colonel, Judge Advocate,
FRED W. LLEWELLYN,
Major, Judge Advocate,
Attorneys for Petitioner.

CHARLES E. WINTER,
Attorney General of Puerto Rico,
BLANTON WINSHIP,
The Judge Advocate General,
Of Counsel.

APPENDICES

State Statutes

APPENDIX I.—Limited Partnerships

APPENDIX II.—Partnership Associations

APPENDIX I

Limited Partnerships

Statutes

NEW YORK:

Limited Partnerships. **Laws of New York, 142d Session, 1919, Vol. 2, Chap. 408, Art. 8, "Limited Partnerships", Sections 90 to 102.**

"Sec. 90. *Formation.* Two or more persons may form a limited partnership, which shall consist of one or more persons of full age, called general partners, and also of one or more persons of full age, who contribute in actual cash payments, a specified sum as capital, to the common stock, called special partners, for the transaction within this state of any lawful business, except banking and insurance, by making, severally signing and acknowledging, and causing to be filed and recorded in the clerk's office of the county where the principal place of business of such partnership is located, a certificate, in which is stated: * * *."

"Sec. 96. *Liability of partners.* The general partners in such partnership shall be jointly and severally liable as general partners are by law. The special partners shall not be liable for the debts of the partnership beyond the fund contributed by them respectively to the capital of the partnership."

"Sec. 97. *General powers of partners.* Except as provided in this section, the general partners only may transact the business of the partnership, and they shall be liable to account to each other and to the special partners, for their management of the business, as other partners are by law. Except as provided in this section, a special partner may not sign for the partnership nor bind the same, nor transact any business on account of the partnership, nor be employed for that purpose, as agent, attorney, or otherwise. A special partner may, from time to time, examine into the state and

progress of the partnership business, and advise as to its management; may loan money to, and advance and pay money for the partnership; may take and hold the notes, drafts, acceptances and bonds of or belonging to the partnership, as security for the repayment of such money and interest, and may use and lend his name and credit as security for the partnership, in any business thereof, and has the same rights and remedies in these respects as other creditors might have; may lease to the general partners any real or other property for the purposes of the partnership, at such rents and on such terms as may be agreed on; and may negotiate sales, purchases and other business for the partnership, but no business so negotiated is binding on the partnership until approved by a general partner. If a special partner interfere contrary to these provisions, he shall be deemed and be liable as a general partner. If such partnership become insolvent or bankrupt, a special partner shall not, except for claims contracted in pursuance of this section, be allowed to claim as creditor, until the claims of all the other creditors of the partnership are satisfied."

"Sec. 98. *Actions by and against the partnership.* Actions and special proceedings in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners."

"Sec. 99. *Capital of special partner not to be withdrawn; when he may receive interest.* No part of the sum which any special partner contributes to the capital stock, shall be withdrawn by him or paid or transferred to him, in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any such partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profit. * * *."

MASSACHUSETTS:

Limited Partnerships. **General Laws of Massachusetts, 1921, Chap. 109, Sections 1 to 11.**

"Section 1. A limited partnership may be formed by two or more persons for the transaction of any lawful business except insurance."

"Section 2. Such partnership shall consist of one or more general partners who shall be jointly and severally liable for all the debts of the partnership, and of one or more special partners who shall each contribute to the common stock in actual cash payment a specific amount as capital and who shall not be personally liable for the debts of the partnership except as hereinafter provided."

"Section 3. The business of such partnership shall be conducted under a firm name in which the names of the general partners only shall be inserted, without the addition of the word 'company' or of any other general term; or, with the consent of the members of a former firm or their legal representatives to whose business it lawfully succeeds, it may be conducted under the name of such former firm. * * *."

"Section 8. During the continuance of such partnership no part of its capital shall be withdrawn, nor shall any division of interest or profits be so made as to reduce such capital below the amount stated in said certificates; but a special partner may withdraw from the profits the interest on the capital contributed by him at any rate agreed on not exceeding six per cent per annum, if such withdrawal does not impair the capital. * * *."

"Section 9. All suits relating to the business of such partnerships shall be prosecuted by and against the general partners only, except when special partners are held liable as general partners and except when special partners are held severally liable on account of money by them withdrawn from the common stock as provided in the preceding section, in which case all the partners so liable may join or be joined."

"Section 11. Except as provided in this chapter the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners."

NEW JERSEY:

"An Act to authorize limited partnerships." Public Laws of 1837, page 121; Compiled Statutes of New Jersey of 1911, Vol. 3, pp. 3917-3921.

"1. *Formation of limited partnerships.* That limited partnerships, for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities, herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance."

"2. *Liabilities of partners.* That such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons, who shall contribute, in actual cash payments, a specific sum, as capital, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund so contributed by him or them to the capital."

"3. *General partners, only, to transact business.* That the general partners only, shall be authorized to transact business, and sign for the partnership, and to bind the same."

"13. *Names of general partners only to be used.* That the business of the partnership shall be conducted under a firm, in which the names of the general partners only, shall be inserted, without the addition of the word 'company' or any other general term; and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner."

"14. *Suits by and against general partners.* That suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there was no special partners."

"15. *Special partners may receive interest and profits.* That no part of the sum which any special partner shall have contributed to the capital stock, shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits."

PENNSYLVANIA:

"Limited partnerships." 2 Purdon's Digest (13th Edition), Vol. 2, pages 2299-2305.

"1. Limited partnerships for the transaction of any agricultural, mercantile, mechanical, mining and transporting of coal, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance."

"2. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute in actual cash payments, a specific sum, as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital."

"3. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same."

"16. Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners."

"17. No part of the sum which any special partner shall have contributed to the capital stock shall be liable for any debts previously contracted by the general partners; nor shall any part of such sum be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital, and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits."

MICHIGAN:

Limited Partnerships. Compiled Laws of Michigan, 1929, Chap. 192, Sections 9885-9908.

"9885. *Limited partnerships; purposes of formation.* Section 1. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two (2) or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter provided; but nothing in this chapter contained shall be construed to authorize any such partnership for the purposes of banking or insurances."

"9886. *General and special partners; liabilities.* Sec. 2. Limited partnerships may consist of one (1) or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are

by law, and of one (1) or more persons who shall contribute a specific amount of capital, in cash or other property at cash value, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the amount of the fund so contributed by them respectively to the capital, except as hereinafter provided."

"9887. *General partners only may transact business.* Sec. 3. The general partners only, shall be authorized to transact business, to sign for the partnership, and to bind the same."

"9898. *Partnership name.* Sec. 14. The business of the partnership shall be carried on under a firm in which the name of one (1) or more of the general partners only shall be inserted, with or without the addition of the words 'and company', or any other general term; and if the name of any special partner shall be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner."

"9902. *Suits; prosecution.* Sec. 18. All suits respecting the business of such partnership, shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this chapter, that the special partners shall be deemed general partners, in which cases all the partners, deemed general partners, may join or be joined in such suits; and excepting also those cases where special partners shall be held severally responsible, on account of any sums by them received, or withdrawn from the common stock as above provided."

"9904. *Partners; rights and liabilities.* Sec. 20. In all cases not otherwise provided for in this chapter, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners."

"9908. *Special partners; rights and remedies.* Sec. 24. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; he may also loan money to, and advance and pay money for the partnership, and may take and hold the notes, drafts, acceptances and bonds of or belonging to the partnership as security for the repayment of such moneys and interest, and may use and lend his name and credit as security for the partnership, in any business thereof, and shall have the same rights and remedies in these respects, as any other creditor might have."

APPENDIX II

Statutes

"Partnership Associations"

PENNSYLVANIA:

2 Purdon's Digest, 13th Ed., pages 2023-2030.

"1. When any three or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation, within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take the acknowledgment of deeds, a statement, in writing, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each, the total amount of capital, and when and how to be paid; the character of the business to be conducted and the location of the same; the name of the association, with the word 'limited' added thereto as part of the same; the contemplated duration of said association, which shall not in any case exceed twenty years, and the names of the officers of said association, selected in conformity with the provisions of this act. And any amendment of said statement shall be made only in like manner; which said statement and amendments shall be recorded in the office of the recorder of deeds of the proper county."

"2. The members of any such partnership association shall not be liable under any judgment, decree or order which shall be obtained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided; that is to say, if any execution, sequestration or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects

of the company, and if there cannot be found sufficient thereof, whereon to levy or enforce such execution, sequestration or other process, then such execution, sequestration or other process may be issued against any of the members to the extent of the portions of their subscriptions, respectively, in the capital of the association, not then paid up: Provided always, That no such execution shall issue against any member, except upon an order of court, or of a judge of the court in which the action, suit or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof and the amount of capital remaining to be paid upon their respective subscriptions, and from them, or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription-list book for that purpose, and the same shall be open to inspection by the creditors and members of the association at all reasonable times."

"14. Whenever any association, formed under the act to which this is a supplement, shall have occasion to execute any deed of conveyance, or bonds with or without coupons, and mortgages, to secure purchase or borrowed moneys, such association shall have a right to adopt and use a common seal, and to acknowledge such instruments or writings, by their chairman and secretary."

"18. All real estate owned or purchased by any association heretofore created, or which may be hereafter created, under and by virtue of the act to which this is a supplement, shall be held and owned, and conveyance thereof shall be made, in the association name. Said association shall sue and be sued in their association name; and when suit is brought against any such association, service thereof shall be made upon the chairman, secretary or treasurer thereof; which ser-

vice shall be as complete and effective as if made upon each and every member of such association."

NEW JERSEY:

Public Laws of 1880, page 304; Compiled Statutes of New Jersey of 1911, Vol. 3, pages 3921-3924.

"30. *Formation of partnership association; statement; acknowledgment; record.*—Sec. 1. That when any three or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, either in money or in real or personal estate, mines or other property, at a valuation to be approved by all the members subscribing to the capital of such association, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take the acknowledgment of deeds, a statement in writing, in which shall be set forth the full names of such persons and the amount of capital * * * ."

"31. *Liability of individual members for judgments and debts of association; execution against members; unpaid subscriptions.*—Sec. 2. That the members of any such partnership association shall not be liable under any judgment, decree or order which shall be obtained against any such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided; that is to say, if any execution, sequestration or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution, sequestration or other process, then such execution, sequestration or other process may be issued against any of the members to the extent of the portions of their sub-

scriptions respectively, in the capital of the association not then paid up; provided always, that no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them, or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose, and the same shall be open to inspection by the creditors and members of the association at all reasonable times."

"38. *Association may sue and be sued; service of process.* Sec. 9. That said association shall sue and be sued in their association name; and when suit is brought against any such association, service thereof shall be made upon the chairman, secretary or treasurer thereof, which service shall be as complete and effective as if made upon each and every member of such association."

"39. *Association may adopt and use common seal; acknowledgments.* Sec. 10. That whenever any association formed under the act to which this is a supplement shall have occasion to execute any deed of conveyance, or bonds with or without coupons, and mortgages, to secure, purchase or borrow moneys, such association shall have a right to adopt and use a common seal, and to acknowledge such instruments or writings by their chairman and secretary."

"40. *Association empowered to hold real estate.* Sec. 1. That any partnership association, formed or to be formed under the act to which this is a supplement, shall have power to purchase and hold real estate and dispose of the same in fee-

simple, or for a less estate, the title thereof to be in the name adopted by such association, and shall be as valid and effectual in law or equity as if the same were held in the individual names of the partners of said association, and every deed or conveyance of the same and every mortgage for purchase or borrowed moneys, shall be made in the name adopted by said association, and executed in the same manner as set forth in section ten of the act to which this is a supplement."

MICHIGAN:

Partnership Associations. Act No. 191 of 1877, —"An Act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances"; Compiled Laws of Michigan of 1929, Chap. 193, "Partnership Associations"; Sections 9909-9928.

"9909. *Partnership association; formation; capital stock; articles, contents, recording.* Section 1. When any three (3) or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take acknowledgments of deeds, a statement in writing, or articles of association, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each; the total amount of capital, and * * * ."

"9910. *Same; liability of members; labor debts.* Sec. 2. The members of any such partnership association shall not be liable under any judgment, decree, or order which shall be ob-

tained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided, that is to say: if any execution or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the members to the extent of the portions of their subscriptions respectively, in the capital of the association not then paid up: *Provided always,* That no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit, or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose and the same shall be open to inspection by the creditors and members of the association, at all reasonable times; *Provided,* That nothing herein contained shall be construed to exempt the members of such partnership association from individual liability for all labor performed for the association."

"9914. *Division of profits; impairment of capital.* Sec. 6. The association may, from time to time, divide the profits of its business in such manner and in such an amount as a majority of its managers may determine, which profits so divided shall not at the time diminish or impair the capital of the said association; and any one consenting to a dividend which shall diminish or impair the capital, shall be liable to

any person or persons interested or injured thereby to the amount of such diminution or impairment."

"9918. *Real estate, ownership and conveyance; service of process.* Sec. 10. All the real estate owned or purchased by any association, created under and by virtue of this fact, shall be held and owned and conveyance thereof shall be made in the association name; said association shall sue and be sued in their association name; and when suit is brought against any such association, service of process and other papers in such suit prior to appearance therein by defendant, shall be made upon the chairman, secretary or treasurer thereof: *Provided,* If no such officer reside in the county where the principal office or place or (of) business or (of) such association is located, or no such officer be found in such county within five (5) days after the commencement of such suit, service of such process and papers may be made upon such association by service thereof upon any clerk, agent or attorney thereof in its office or place of business named in its articles of incorporation, which service shall be as complete and effective as if made upon each and every member of such association."

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Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

RUSSELL & CO., *Sucres., S en. C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, *et al.*, *Respondents.*

MEMORANDUM of oral argument for Petitioner on jurisdictional question, as to the case of *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449.

The opinion of the court in the *Great Southern Fireproof Hotel Co.* case might be interpreted in any one of three ways:

FIRST: *As meaning to narrow the* LETSON *case, and for that purpose to hold that nothing is to be considered as a corporation for the purposes of federal jurisdiction except a technical "corporation" expressly so-called by the statute under which it is organized.*

But that would be to regard the name rather than the substance and would appear to be out of harmony with the liberal tendencies of this court as evinced not only by its definition of the essential elements of a corporation in the *Letson* case and also in the *Liverpool Insurance Co.* case (*Liverpool Insurance Co.* v. *Massachusetts*, 10 Wall. (77 U. S.) 566, 574), and the statement in the *Liverpool Insurance Co.* case (at p. 575) that,

> "To attempt, therefore, to define a corporation, or limit its powers by the rules which prevailed when they were rarely created for any other than municipal purposes, and generally by royal charter, is impossible in this country and at this time";

and evinced also by recent decisions, such as *Hemphill* v. *Orloff*, 277 U. S. 537, 550, where this court said,

> "Whether a given association is called a corporation, partnership, or trust, is not the essential factor in determining the powers of a state concerning it. The real nature of the organization must be considered. If clothed with the ordinary functions and attributes of a corporation, it is subject to similar treatment",

and the *Coronado* case (*United Mine Workers* vs. *Coronado*, 259 U. S. 344, 391-392) holding labor union organizations suable in federal courts, and cases following the *Coronado* case, such as, for instance, *Brown* v. *United States*, 276 U. S. 134, 142, holding that a subpoena *duces tecum* even in a criminal proceeding may run against an unincorporated association. Evidently, therefore, it was not the intention of this Court in the *Great Southern Fireproof Hotel Co.* case to hold that the mere name or label "corporation", or the mere absence of that label, is the determinative thing.

SECOND: *It might be interpreted as meaning that partnership associations of Pennsylvania inherently do not possess the essential elements of a corporation*, and as disagreeing with the opinions of the Circuit Courts of Appeals of the Second and Sixth Circuits and with the Circuit Judges for the New York and Ohio Circuits, who had determined that they did. (*See the decisions in the Circuit Courts of Appeals and of the Circuit Courts collected in petitioner's reply brief herein*, on page 19). But if that had been the intention of this Court in the *Great Southern Fireproof Hotel Co.* case then one would

expect to find in that opinion an examination of the essential elements of the Pennsylvania partnership associations and a comparison of those elements with the elements which this Court in the *Liverpool Insurance Co.* case, *supra* (10 Wall (77 U. S.) at page 574) and in the *Letson* case had laid down as the essential elements of a corporation; and also an examination of the opinions of the subordinate federal courts, particularly of that of the Circuit Court of Appeals for the Sixth Circuit in *Andrews Bros. Co.* v. *Youngstown Coke Co., Ltd., supra,* 86 Fed. 585, 586-596, which is mentioned in the opinion of this Court (177 U. S., at p. 457) and a statement of the reasons of this Court for holding that the Pennsylvania "partnership association" lacked in its organization some of the essential elements of a corporation. And particularly an examination of the grounds of the statements of the Pennsylvania Supreme Court, in the Pennsylvania cases cited in the opinion for calling the organization a "quasi-corporation", and an analysis of those Pennsylvania cases for that purpose. But there is nothing of that kind in the opinion, nor anything intimating any intention to overrule or limit the statements of this Court in the *Liverpool Insurance Co.* case and in the *Letson* case as to what are the essential elements of a corporation. And the *Liverpool Insurance Co.* case was recently cited, apparently with full approval, in *Hemphill* v. *Orloff, supra,* 277 U. S. 537, 550.

THIRD: *The opinion in the Great Southern Fireproof Hotel Co. case may be read as intending to hold simply that this Court will follow the determination of the local State court as to whether or not the organization is a corporation, and will not look behind the determination of the State court.*

This interpretation seems to be consistent with the form of the opinion in the *Great Southern Fireproof Hotel Co.* case, and with the fact that this Court in that opinion emphasized

the conclusions of the Pennsylvania court as to the nomenclature to be used in describing partnership associations of that State, instead of examining for itself the essential characteristics of those organizations; and that, in disagreeing with the opinion of the Circuit Court of Appeals for the Sixth Circuit in the *Youngstown Coke Co.* case, this court contented itself with saying,

> "For the reasons stated, we are unable to concur in the view taken by that court",

"the reasons stated" not going to the fundamental structure of the organizations, but rather to what the Pennsylvania Supreme Court had named them. That this is the correct interpretation to be put on the *Great Southern Fireproof Hotel Co.* opinion seems to have been assumed by the Circuit Court of Appeals for the Sixth Circuit when later on it came to deal with a "partnership association" of Michigan, and, holding that such an organization could not be distinguished in its elements from the Pennsylvania partnership association, and recognizing that its own decision as to the Pennsylvania organizations had been overruled by this Court in the *Great Southern Fireproof Hotel Co.* case, it said:

> "Thus there has never been any decision of the State of Michigan which determines that these associations are corporations" (*Fred Macey Co.* v. *Macey,* 135 Fed. 725, 728; LURTON, J.),

and on that ground held that it could not "reasonably distinguish this association from those under view" in the *Great Southern Fireproof Hotel Co.* case. That seems to be a recognition that if the Michigan Supreme Court had determined that such an association was a *corporation* then the Circuit Court of Appeals would have considered itself free, under the

opinion of this Court in the *Great Southern Fireproof Hotel Co.* case, to follow such determination of the Michigan court. And along the same line is also the later opinion of this Court, likewise written by Mr. Justice HARLAN who wrote the opinion in the *Great Southern Fireproof Hotel Co.* case, in the case of *Thomas* v. *Board of Trustees of Ohio State University,* 195 U. S. 207, in which this Court held that it would not consider the Board of Trustees as a corporation, although it apparently possessed all of the essential elements of a corporation, simply because the Ohio courts had held that it was not a corporation, that

> "upon an issue distinctly made, the Supreme Court of Ohio has adjudged that the defendant Board is not, and was not intended to be made, a corporation of the State" (at p. 216),

and that

> "While the state court may not conclusively determine for this court what is and what is not a corporation within the meaning of the jurisdictional rule that a corporation, for purposes of suing and being sued in the courts of the United States, is, under the Constitution and laws of the United States, to be deemed a citizen of the State by whose laws it is created, nevertheless, this court should accept the judgment of the highest court of a State upon the question whether a particular body created by its laws is or is not a corporation, by virtue of those laws, unless a contrary view is demanded by most cogent reasons involving or affecting the constitutional and statutory jurisdiction of the Federal courts." (at pp. 216-217).

IN OTHER WORDS, THE DETERMINATIVE THING IS WHAT THE LOCAL STATE COURT OF LAST RESORT HAS DETERMINED THE ORGANIZATION TO BE. If that court has determined that it is a corporation, then it is a corporation for Federal jurisdic-

tional purposes; and *vice versa*, if that court has not determined it to be a corporation, then it is not a corporation for federal jurisdictional purposes, until or unless the local State court has so determined.

Accepting that rule, the *sociedad* here in question is a corporation for the purposes of federal jurisdiction. The local supreme court of last resort,—the Supreme Court of Puerto Rico,—has expressly so determined in the *Zayas* case (*People of Puerto Rico* v. *Rivera Zayas*, 29 P.R.Rep. 423, 428-431), cited and quoted in our supporting brief and in our reply brief herein (Supporting Brief, pp. 21-24; Reply Brief, pp. 24-25).

WILLIAM CATTRON RIGBY,
Colonel, Judge Advocate,

FRED W. LLEWELLYN,
Major, Judge Advocate,
Attorneys for Petitioner.

CHARLES E. WINTER,
Attorney General of Puerto Rico,

BLANTON WINSHIP,
The Judge Advocate General,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 492.

THE PEOPLE OF PORTO RICO, *Petitioner,*

v.

HORACE HAVEMEYER, FRANK A. DILLINGHAM, EDWARD S. PAINE, FRANK M. WELTY, EDWIN L. ARNOLD and H. B. ORDE, co-partners doing business under the firm name and style of RUSSELL & COMPANY, Sucesores, S. en C., *Respondents.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

FRANCIS E. NEAGLE,
Attorney for Respondents.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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In The

Supreme Court of the United States

October Term, 1932.

No. 492.

The People of Porto Rico, Petitioner,

against

Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Frank M. Welty, Edwin L. Arnold and H. B. Orde, co-partners doing business under the firm name and style of Russell & Company, Sucesores, S. en C., Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

Introductory.

After the passage of Porto Rican Act No. 49 of 1921 (Laws of Porto Rico 1921, p. 366) and after attempted assessment under that Act upon the properties owned or leased by the respondents, the respondents, as co-partners doing business under the name of Russell & Company, Sucesores, S. en C., brought suit in the District Court of the United States for Porto Rico against the Treasurer of

Porto Rico to enjoin the collection of the tax alleged to be due. The injunction was granted by the lower court and appeal was taken by the Treasurer to the United States Circuit Court of Appeals for the First Circuit. The case was there pending at the time of the passage of the Act of March 4, 1927 (44 Statutes at Large 1421). That Act amended the Organic Act of Porto Rico (39 Statutes at Large 951) so as to take away from the District Court of the United States for Porto Rico jurisdiction of any suit to restrain the assessment or collection of any Porto Rican taxes. This court held in *Smallwood* v. *Gallardo*, 275 U. S. 56, that all pending Porto Rican tax injunction suits, whether in the lower court or on appeal, should be dismissed for want of jurisdiction, and the injunction obtained by the respondents against the Treasurer of Porto Rico was, therefore, set aside by the Circuit Court of Appeals (*Gallardo* v. *Havemeyer*, 21 Fed. (2d) 1012).

On April 23, 1928, Congress passed an act for the relief of taxpayers whose suits had been dismissed by reason of the decision of this court in *Smallwood* v. *Gallardo, supra*. This act (45 Statutes at Large 447) is as follows:

> "That if in any suit pending March 4, 1927, but since abated or dismissed solely by reason of the provisions of the Act entitled 'An Act to amend and reenact sections 3, 20, 31, 33, 38 and 48 of the Act of March 2, 1917, entitled "An Act to provide a civil government for Porto Rico, and for other purposes," as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as "5a" of said Act,' approved March 4, 1927, the taxpayer had prior to such date obtained an injunction restraining the assessment or collection of any

tax imposed by the laws of Porto Rico after trial on the merits in the District Court of the United States for Porto Rico, or if in any such suit on appeal to the United States Circuit Court of Appeals for the first circuit the right of any taxpayer to an injunction restraining the assessment or collection of any tax imposed by the laws of Porto Rico had been decreed, the treasurer of Porto Rico shall enforce the collection of the tax so enjoined or decreed by a suit at law instead of by attachment, embargo, distraint, or any other form of summary administrative proceeding. Notwithstanding the provisions of any existing statute of limitations, any such suit may be instituted at any time not later than one year after the approval of this Act."

From and after the passage of this Act the People of Porto Rico could collect the taxes in issue here only by virtue of this United States statute, and the suit was brought under and because of that statute.

Argument.

A writ of certiorari in this case is sought for the purpose of securing from this court a repudiation and overruling of the settled rule that for jurisdictional purposes the citizenship of a partnership shall be determined by the citizenship of the members of the partnership. The People of Porto Rico attempted heretofore, in May, 1922, in a suit between these same parties, to have this court do what it now again seeks. Its application then was denied. *People of Porto Rico* v. *Fortuna Estates*, 259 U. S. 587.

Petitioner also seeks to have the holding of the Circuit Court of Appeals that Porto Rican Act No. 49 of 1921,

in so far as it applies to taxes upon lands of the respondent partners, impairs the obligation of contracts made in 1914 by the People of Porto Rico and the predecessor in title and the lessors of the respondent partners, reviewed by this court. It also desires to have reviewed the decision of the Circuit Court of Appeals that Act No. 49 of 1921 is invalid as a delegation of legislative power (taxing power) to administrative officials in violation of the Organic Act of Porto Rico.

The decision of the Circuit Court of Appeals for the First Circuit in connection with the question of jurisdiction is not only not in conflict with the decision of another Circuit Court of Appeals on the same matter, but is in accordance with a long line of decisions both of this court and of other Circuit Courts of Appeal.

The Circuit Court of Appeals for the First Circuit has not decided any important question of general law in a way probably untenable or in conflict with the weight of authority.

It has not decided an important question of Federal law which has not been settled by this court.

It has not decided any Federal question in a way probably in conflict with applicable decisions of this court.

The question of the jurisdiction of Federal courts is not a question of local Porto Rican law.

There is no decision of the Supreme Court of Porto Rico or any of the lower insular courts that Porto Rican Act No. 49 of 1921 does not impair the obligations of the contracts between the People of Porto Rico and respondent partners' predecessor in title and lessors or that Act No. 49 of 1921 does not delegate legislative authority to administrative officials.

The only questions in the case are questions of Federal law. The suit was brought under an Act of Congress (Act

of April 23, 1928). It was removed to the District Court of the United States for Porto Rico under Federal laws (Organic Act of Porto Rico, § 28 of the Judicial Code, 28 U. S. C. A. §71).

The District Court of the United States for Porto Rico Had Jurisdiction of the Action.

The People of Porto Rico was on one side and on the other side all of the parties were "citizens or subjects of a foreign state or states, or citizens of a state, territory, or district of the United States not domiciled in Porto Rico." Hence the lower court had jurisdiction. (*Porto Rico Railway Light & Power Company* v. *Mor*, 253 U. S. 345; *People of Porto Rico* v. *Fortuna Estates*, 259 U. S. 587; *People of Porto Rico* v. *Fortuna Estates*, 279 Fed. 500; *Goico* v. *Russell & Co.*, 4 Fed. (2d) 7.)

The court below had jurisdiction not only because of diversity of citizenship but also because the suit was brought under an Act of Congress (*Camunas* v. *Porto Rico Railway Light & Power Company*, 272 Fed. 924).

Petitioner seeks to have this court set aside the rule that in the Federal courts for purposes of jurisdiction the citizenship of a partnership is the citizenship of its individual members, whether under the law of the place of its origin the partnership is regarded as an entity and may sue or be sued in its partnership name. This rule is the result of the decisions in *Chapman* v. *Barney*, 129 U. S. 677, 682; *Great Southern Fireproof Hotel Co.* v. *Jones*, 177 U. S. 449, 455; *McLaughlin Brothers* v. *Hallowell*, 228 U. S. 278; *Bruett & Co.* v. *Austin Drainage Excavator Co.*, 174 Fed. 668; *Columbia Digger Company* v. *Rector*, 215 Fed. 618;

Empire Rice Mill Co. v. *Neumond,* 199 Fed. 800 (Louisiana); *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500, 505; *Goico* v. *Russell & Company,* 4 Fed. (2d) 7.

The only decision contrary to the above cases is *Liverpool, Brazil and River Platte Navigation Co.* v. *Agar & Lelong,* 14 Fed. 615, but that case was expressly repudiated by the same court in *Empire Rice Mill Co.* v. *Neumond, supra.* Both cases dealt with the civil law concept of a partnership.

Petitioner seeks to have this court overturn this well settled rule by claiming that a Porto Rican partnership is not the same as an American partnership, and that a Porto Rican limited partnership is more nearly analogous to a corporation than to a partnership. To support this it attempts to retranslate various sections of the Code of Commerce and Civil Code of Porto Rico, and wherever it finds the words "sociedad" or the word "colectiva" or the word "comanditaria" or the word "anonima," it refuses to translate them, as they always have been translated, "partnership," "general partnership," "limited partnership" and "corporation," respectively, but says the words cannot be translated into English.

Petitioner is like the man in the regiment who was out of step and called attention to the fact that every other soldier in the regiment was out of step with him.

The words mentioned above are uniformly translated as "partnership," "general partnership," "limited partnership" and "corporation." They are so translated in the official text of the "Compilation of the Revised Statutes and Codes of Porto Rico" published in 1913 as Senate Document No. 813, 61st Congress. They are so translated in the translation of the Civil Code of Porto Rico revised

and published under the provisions of Joint Resolution No. 18 of 1930 (Laws P. R. 1930, p. 616), by the Legislative Joint Commission created by Porto Rican Act No. 50 of 1928 (Laws P. R. 1928, p. 320). This translation shows that all the members of the Joint Commission were Bachelors or Doctors of Law, and that the Secretary of the Commission was a Bachelor of Law.

Walton in his "The Civil Law in Spain and Spanish America," published in 1900 in Washington by W. H. Lowdermilk & Co., translates the word "sociedad" always as "partnership." In "The Argentine Civil Code," an official publication of the Comparative Law Bureau of the American Bar Association, published in 1917 by the Boston Book Company, Frank L. Joannani, the translator, translates the word "sociedad" uniformly as "partnership."

The French Civil Code is very similar to the Spanish Civil Code and in place of the word "sociedad" one finds the word "société." E. Blackwood Wright in "The French Civil Code" published in London by Stevens & Sons, Ltd. in 1908, uniformly translates the word "société" as "partnership." Mr. Wright was the Chief Justice of Seychelles, where the Code Napoleon was in force.

Can it be that words uniformly translated by lawyers into perfectly good legal English have suddenly become so different in legal meaning that they cannot now be translated?

We think that petitioner has shown no reason for the change by this court of its rule of decision laid down forty-five years ago in *Chapman* v. *Barney, supra.*

Counsel seeks to inject into the case a question which is foreclosed by the record.

The original complaint (Record, p. 87) says:

> "The defendant is a civil limited partnership organized under the laws of Porto Rico. According to the information and belief of the plaintiff, the defendant firm or entity is made up of the following persons who have associated themselves for the carrying on of the business of cultivating sugar cane under the said name in general in Porto Rico: Frank A. Dillingham, Horace Havemeyer, William H. Morgan, as regular partners, and Frank M. Welty, Edwin L. Arnold and H. B. Orde, as silent partners; the plaintiff not knowing the residence and nationality of the stated persons."

The petition in removal is to the same effect (Record, p. 6). The amended complaint (Record, p. 2) states:

> "That the defendant is a civil agricultural partnership organized as a juridical entity under the civil laws of Porto Rico with capacity to sue and be sued."

It then alleges the partners who compose Russell & Company, Sucesores, S. en C. This pleading was in English. It was signed by James R. Beverley, the Attorney General, who is an American, of which fact the court will take judicial notice.

In that amended motion to remand (Record, p. 11), it is stated that

> "* * * defendant in this case, as it appears from the complaint, is a civil partnership constituted under the provisions of the Civil Code of Porto Rico."

The case was tried upon an agreed statement of facts, which says (Record, p. 66):

> "Come now the parties hereto by their undersigned attorneys and, for the purpose of the trial

of this action by this court and any and all appeals taken herein stipulate and agree upon the following statement of facts:

* * * * * *

2. That the defendants, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, now constitute and at the time of the institution of this suit constituted the civil agricultural limited partnership of Russell & Co., Sucesores, S. en C. (formerly Russell & Co., S. en C.), organized under the laws of Porto Rico; that at all such times said Frank A. Dillingham was and is a citizen and resident of the State of New Jersey; said Horace Havemeyer a citizen and resident of the State of New York; Edward S. Paine a citizen and resident of the State of New York; Edwin L. Arnold a citizen and resident of the State of Florida; Frank M. Welty a citizen and resident of the State of Ohio, and H. B. Orde a citizen of Great Britain and a resident of the Dominion of Canada."

This stipulation was signed by James R. Beverley, Attorney General of Porto Rico. The stipulation is in English. The stipulation was made after the motion to remand.

We submit that petitioner has stipulated to the contrary of the position it now takes.

The long quotation in petitioner's brief (p. 21 ff.) from the case of *People* v. *Rivera Zayas, District Judge,* 29 P. R. 423, is quite inapposite. It was an opinion on an appeal taken in the Insular Court from the order of removal in the case reported as *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500, certiorari denied by this court in 259 U. S. 587. All proceedings in that case by the Attorney

General of Porto Rico in the insular courts were enjoined by the Judge of the District Court of the United States for Porto Rico and his action was affirmed by the Circuit Court of Appeals in *Mestre, Attorney General of Porto Rico* v. *Russell & Company, S. en C.*, 279 Fed. 44.

Although the Supreme Court of Porto Rico had no power to pass upon a question of jurisdiction arising in the District Court of the United States for Porto Rico, it is interesting to note that the court said (29 P. R. at 430; Petitioner's Brief, p. 23):

> "We need not, therefore, even decide in this case whether a *sociedad en comandita* is or is not a citizen."

All that the Supreme Court of Porto Rico held was that a *sociedad en comandita* is an entity distinct from the members that compose it, and that as *the entity* was sued in the *insular court* and as it was organized under the laws of Porto Rico, *the entity* had no citizenship distinct from the People of Porto Rico or it had no citizenship at all.

It is not denied that a partnership, whether general, limited or a partnership with share capital (*sociedad anonima*) is a juridical entity under the law of Porto Rico for the purpose of suing and being sued in the Porto Rican courts. It is a far cry, however, from that to say that a Porto Rican partnership is a corporation for purposes of Federal court jurisdiction. A Porto Rican partnership with share capital is more like a joint stock association than a corporation, but this court has held that a joint stock association is not a corporation for the purpose of conferring jurisdiction upon a Federal court. Still less is a limited partnership a corporation.

Porto Rico, like the states of the United States, has true corporations (Corporation Law of Porto Rico, Compilation of Revised Statutes and Codes of Porto Rico, p. 88).

And it is not odd that in Porto Rico the Civil and Commercial Codes contain provisions with regard to partnerships. Such provisions are common in the statute laws of all of the states of the United States.

If petitioner should succeed upon this jurisdictional ground alone and the case should be remanded by this court with instructions that it be remanded to the insular courts of Porto Rico, the case would again come through the insular courts of Porto Rico to the Circuit Court of Appeals for the First Circuit and presumably it would be decided upon the merits by the Circuit Court of Appeals in the same way.

The Circuit Court of Appeals has complete authority to review decisions of the Supreme Court of Porto Rico where the amount involved is five thousand dollars ($5,000) or more. (28 USCA., 225 (a), (d), 39 Stat. at L. 951, Sec. 43.)

The Circuit Court of Appeals for the First Circuit is, by reason of its appellate jurisdiction, given by Congress the power to pass upon the constitutionality of local laws of Porto Rico. Hence the situation is not the same as in the case where a Circuit Court of Appeals passes upon a statute of a state.

It is for this reason undoubtedly that the petitioner, on page 14 of his petition, admits that the jurisdictional question here presented may be of little or no importance in this particular case.

The Obligation of the Contracts of Respondents' Predecessor in Title and Lessors Was Clearly Impaired.

The agreed statement of facts beginning on page 66 of the record cannot well be boiled down more.

Respondents' predecessor in title and its lessors have owned water concessions on the Jacaguas River dating back as far as 1845 (Record, p. 48). In accordance with the provisions of the Public Irrigation Law approved September 18, 1908 (Laws of Porto Rico 1908, Special Session, p. 44), as amended in 1911 (Laws of Porto Rico 1911, p. 237), and as further amended in 1913 (Laws of Porto Rico, Extraordinary Session 1913, p. 54), the People of Porto Rico undertook the construction of a public irrigation system on the south coast of Porto Rico, and in the course of such work erected a dam for the impounding and storage of the waters of the Jacaguas River, which is known as the Guayabal Dam, and extends across the bed of the Jacaguas River above the intakes which the respondents' predecessor in title and lessors used for taking water under their ancient concessions (Record, p. 68).

The Irrigation Law provided that the People of Porto Rico could condemn existing water rights, in which case the fair value thereof would have been paid in cash to the owners. It also provided that the owners of concessions could relinquish them, have them valued either by mutual agreement or in the manner provided in the Irrigation Law, and be paid the amount agreed upon by receiving credits upon their proportionate part of the expense of the construction and operation of the dam. However, if

water rights were not condemned or relinquished, Section 13 of the Act of 1913 (p. 72) provided that

> "such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of said water right or concession."

Lands with unrelinquished concessions could not be included within the irrigation district upon which was imposed the cost of construction and maintenance of the irrigation system.

Respondents' predecessor in title and lessors refused to relinquish their concessions and they were not condemned by the Government. Thereafter the Government entered into negotiations with the owners of the concessions for the purpose of fixing the amount of water, and the time and place where it would be taken, which would be the reasonable equivalent in value under the concessions.

Contracts were made (Exhibit A, Record, p. 36; Exhibit B, Record, p. 52) under which the concession holders agreed to take regular daily amounts which averaged approximately twenty-five per cent. less than the amount specified in the concessions, and the People of Porto Rico specifically agreed to deliver the amount of water agreed upon (Record, pp. 36, 52). As well stated by the court below at page 101 of the Record:

> "It thus appears that the amounts of acre feet of water per year agreed upon in that contract were the equivalent in value of the old water rights or concessions which Fortuna Estates owned and which it had not relinquished to The People of Porto Rico, and that The People of Porto Rico agreed to deliver those amounts uniformly throughout the year, and

> further specified the number of feet to be delivered per day, and the consideration therefor was the right acquired by The People of Porto Rico to carry out its irrigation scheme and operate its dam and hold back and store therein the waters of Jacaguas River, which otherwise it could not do, for the Irrigation Act of 1908, as amended in 1911 and 1913, did not make any of the lands here in question a part of the irrigation district thereby constituted."

Difficulties arose between the Government and the respondents as to certain of the water covered by the contract with Fortuna Estates (Exhibit A, Record, p. 31 ff.), the Government claiming the right to sell it and respondents denying that right. Respondents' contention was upheld in the courts (*People of Porto Rico* v. *Russell & Company*, 268 Fed. 723).

In that case the Circuit Court of Appeals for the First Circuit held at page 729 that

> "* * * we think it is apparent from a reading of the contract that their old concessions are suspended while the contract remains in force, and that, as it is still in force, their right to the water in question depends upon the contract."

In other words, while the contract exists the Circuit Court of Appeals says respondents have no operable rights under concessions. Whether or not the concessions could once have been taxed, certainly from the time of the decision of the Circuit Court of Appeals the concessions being suspended could not be taxed. Nevertheless, they have been taxed, for by the agreed statement of facts (par. 21, Record, p. 73) we find that the properties to which the concessions are appurtenant

> "are subject to all real property taxes levied by The People of Porto Rico for insular or municipal purposes, and all of such taxes levied from 1921 to date have been paid from year to year at the same rates paid by other properties, whether included in the South Coast Public Irrigation District provided by the Irrigation Law or not included therein, and whether the owners of the land have relinquished their concessions for irrigation water or have not relinquished them."

The decision of the Circuit Court of Appeals above referred to was handed down in October, 1920, and in 1921 at the first session of the Legislature thereafter Act No. 49 of 1921 was passed, the stated purpose of which is to compel the respondents to pay a special tax for the water which they receive under the contract with the Government of Porto Rico, by way of exchange as an agreed equivalent in value to their rights under the concessions.

That Act provides in Section 1:

> "That a *special tax* is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the south coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, *but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.*" (Italics ours.)

Under the Irrigation Law the Government could give only the fair equivalent of the water respondents were entitled to under the concessions. The Government and the concession owners agreed upon this amount. It was in total approximately twenty-five per cent. less than the

amount to which they were entitled under the concessions. The Government agreed to deliver this water to them at certain intakes specified in the contracts, which intakes are located upon property of respondents and its lessors. They gave up certain rights to torrential water which they had under concessions.

The claim of the Government now is that they can charge the respondents for delivering this water, using as an instrument therefor a special tax, the proceeds of which will be used under the law for not only the maintenance of the irrigation system but for the cost of its construction and for the cost of construction and maintenance of certain hydro-electric developments of the People of Porto Rico, having nothing to do with the irrigation system other than that they make use of water power provided because of the construction of irrigation dams.

The Act of 1921 puts the respondents on a par with land owners who receive waters from the irrigation service without ever having owned concessions, and puts them at a disadvantage compared with those who had water rights which were condemned for cash or were relinquished for a price which is credited upon the annual assessment as it becomes due.

A clearer case of governmental bad faith and of impairment of the obligation of a contract could not be found. The Government says to the respondents: "You have certain rights of which you cannot be deprived except by condemnation. If we condemn, you must be paid the value of your property. If, however, you will accept the fair equivalent in value for the water to which you are entitled, we will deliver it to you." Relying upon the good faith of the Government, the fair equivalent is fixed and the Government

begins to deliver it. A dispute arises and the courts hold that because of the contract the concession rights are suspended. Then the Government says: "As your concessions are suspended, and as you are bound by the contract, and as we have the power to tax, even though we have agreed under the contract to deliver you the water which is only a fair equivalent to your concession water, we will now only do this if you pay part of the cost of delivering that water to you."

It would seem that a statement of the essential nature of the transaction is all that is necessary.

We believe that the authorities cited in the opinion of Judge Bingham (Record, p. 93) are sufficient.

Section 11 of the Irrigation Law of 1913 (Laws of Porto Rico, Extraordinary Session 1913, p. 67) provides for the tax which is to be levied upon any "given tract of land included in the permanent irrigation district."

No tax is provided for in connection with the construction or operation of the irrigations works except upon the land that is benefitted thereby.

The irrigation works were not to be paid for by a general assessment upon all property in Porto Rico but were treated as local improvements, the burden of payment for which was to be borne only by land deriving benefit therefrom.

The method of fixing the amount of the taxes to be paid by the lands included in the permanent irrigation district is as follows:

The Treasurer calculates the amount of interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year and adds thereto the amount due upon credits for the ensuing year on account

of water rights or concessions which have been valued and relinquished. He then adds the amount estimated by the Commissioner of the Interior as the probable cost of operating and maintaining the irrigation system for the ensuing year. There is then either added to or subtracted from this total the estimated amount of any deficit or surplus from operations for the current fiscal year, and from this total there is then subtracted the amount estimated by the Commissioner of the Interior as receipts for the ensuing year from the sale of any water power developed in connection with the irrigation system, and the amount estimated by the Commissioner of the Interior as receipts for the ensuing year from any other sources except from the issues of bonds and special assessments upon the land in the permanent irrigation district. To the total so determined the Treasurer adds two per cent. as a margin of safety, and the amount thus determined constitutes the total sum to be assessed for the ensuing fiscal year "upon the lands at the time included in the permanent irrigation district."

It will thus be seen that the total cost of building and operating the irrigation system is made a charge upon the land benefited thereby and included in the permanent irrigation district. (Laws of Porto Rico, Extraordinary Session 1913, Sec. 11, quoted at page 69 of the petition for certiorari.)

Section 3 of the Public Irrigation Law (Laws of Porto Rico, Special Session 1908, p. 46) is as follows:

> "The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sales of water and power within the irrigation district shall, subject to the provisions of Section 29 of this Act, be deposited in the Treasury of Porto

> Rico in a trust fund to be known as the 'Irrigation Fund', which fund may be subdivided for statistical purposes as the auditor may prescribe. *All expenditures for the construction and maintenance of the irrigation system and all payments of interest and principal of any debt incurred for the construction of the said system, shall be payable from the said trust fund* upon warrant of the auditor, countersigned by the Governor." (Italics ours.)

In Section 2 of Act No. 49 of 1921 it is provided:

> "This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, and the *moneys collected shall be covered into the Insular Treasury to the credit of a special trust fund known as the 'Irrigation Fund', to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof.*" (Italics ours.)

Thus it will be seen that though the Irrigation Law provides for the payment through the "Irrigation Fund" by the lands included in the permanent irrigation district, the owners of which are benefited by this public improvement, of the total cost of building and operating the irrigation system, the moneys sought to be collected from the respondents under Act No. 49 of 1921 must by the words of the law itself go into this "Irrigation Fund" and be used for the payment not only of the cost of maintaining an improvement paid for by special assessment, but also for the cost of constructing the improvement which, as already provided by law, must be paid for in full and will be paid for by those benefited thereby.

Act No. 49 of 1921, therefore, provides for a tax which is not necessary to defray any of the expenses for the construction or operation of the irrigation system, for the Irrigation Law itself provides for the payment of such expenses by the lands benefited by the works.

The tax is plainly not a special assessment tax. It is payable only, however, by the owners of lands receiving by contract from the Government the equivalent of water due under concessions which the Government cannot take away from them without condemnation proceedings.

Those who had concessions and did not relinquish them receive no benefit from the irrigation system. The general mass of property owners in Porto Rico receive no benefit from the irrigation system. The general mass of property owners, however, are not taxed for the cost of constructing and maintaining the irrigation system. The respondents under the Law of 1921 are taxed.

The Law of 1921 in question here attaches to the contracts between the Government of Porto Rico and respondents' predecessor in title and lessors a burden not placed upon the respondents by the terms of the contracts. The Government is required under those contracts to deliver water at certain specified intakes and in certain amounts day by day. Whether they carry it there in buckets is immaterial. If they carried it in buckets certainly they could not tax the respondents with the cost of the buckets, nor could they charge the respondents with the wages of the carriers of the buckets. That they have built an irrigation system which may be used in delivering the water makes no difference. The nature of the irrigation system was known when the contracts were made. It must be assumed that it had been partly, if not wholly, completed.

The Government knew that it had to be maintained. It had provided that the total cost of its maintenance be borne by the lands in the irrigation district. Had it intended to charge respondents' predecessor in title and its lessors with any part of the cost of maintenance, provision to that effect should have been made in the contract.

The concession owners who contracted with the Government contracted in view of the provisions of the Irrigation Law. To attempt now to collect from them any part of the money necessary either for the construction or the maintenance of the irrigation system is beyond question an impairment of the rights which they have under their contracts, and therefore invalid.

How little the Government regards the sanctity of contracts is apparent from the following statement in petitioner's brief at pages 47 and 48:

> "But the Government regards the question whether the lands in question are specially benefitted by the development and maintenance of the irrigation system, otherwise than by the mere delivery of the amount of water stipulated in the contracts, as one for determination by the insular Legislature in its discretion, and one which that Legislature has in effect determined by the Act of 1921."

It necessarily follows from this that year by year, so long as the irrigation system exists, the insular Legislature may have a new thought upon the subject and may determine from year to year that in its opinion the lands in question are benefited more and more and should pay other or additional taxes.

The mere statement of the Government's position is its own refutation.

Act No. 49 of 1921 Delegates to Administrative Officers the Legislative Function of Levying the Tax and is Void.

Section 1 of Act No. 49 of 1921 (Laws of Porto Rico, 1921, page 366), provides:

> "That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system."

Section 2 provides the method by which the Treasurer of Porto Rico fixes the total number of acres receiving water from the irrigation system; provides for an estimate by the Commissioner of the Interior of the cost of operaing and maintaining the irrigation system during each fiscal year; and then provides that the Treasurer shall divide the amount estimated by the Commissioner, plus any deficit or less any surplus from the preceding year's operations, by the number of acres receiving water from the irrigation system; and the quotient it is said:

> "shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

> This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, * * *."

From the above it will be seen that Act No. 49 of 1921 gives the Treasurer of Porto Rico in conjunction with the Commissioner of the Interior the right in his absolute discretion to determine those who shall pay the tax, what the total amount shall be, and the rate. Not only does the act do this but in addition it gives to the Treasurer the right to levy. There could not be a more flagrant instance of delegation to administrative officials of the power to take private property in the guise of taxation.

The exercise of the taxing power is a function which is legislative and not administrative.

Legislative functions cannot be delegated to administrative officials.

In 37 *Cyc.*, page 725, we find these words:

> "It is not competent for the legislature to delegate its power of taxation, wholly or in part, to either of the other departments of government, or to any individual, private corporation, officer, board, or commission."

In *Cooley on Taxation*, 4th Edition, Volume I, page 184, the learned author says:

> "It is a general rule of constitutional law that a sovereign power conferred by the people upon any one branch or department of the government is not to be delegated by that branch or department to any other. This is a principle which pervades our whole political system, and, when properly under-

> stood, admits of no exception. And it is applicable with peculiar force to the case of taxation. The people have created a legislative department for the exercise of the legislative power; and within that power lies the authority to prescribe the rules of taxation, and to regulate the manner in which those rules shall be given effect. The people have not authorized this department to relieve itself of the responsibility by a substitution of other agencies. The power to impose taxes being purely legislative, the legislature cannot delegate the taxing power, * * * either to the executive department of government or to the judicial department, * * *."

The reason for the exercise, solely by the legislature, of the power to tax is found in the opinion of Chief Justice Marshall in *M'Culloch* v. *Maryland*, 4 Wheat. 316, at page 428:

> "The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation.
>
> The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse * * *."

The taxing act must not only lay down the method by which administrative officials are to assess the tax but it must fix the amount to be collected either as a sum certain or by selecting the subjects of the tax and declaring what the rate shall be.

We read in *Cooley*, Volume I, page 194:

> "The nondelegable powers, *i. e.*, the powers which cannot be delegated to merely ministerial or judicial officers, include the selection of the property to be taxed, * * * the fixing of the amount of the tax to be imposed, the fixing of the rate of taxation, * * *."

And again in Volume 3, page 2044:

> "* * * a levy is the legislative act, whether state or local, which determines that a tax shall be laid, and fixes its amount * * *. It is to be distinguished from an assessment, although sometimes the term is loosely used as including the assessment. The 'levy' fixes the subject and rate of taxation and is a legislative function; the 'assessment' consists in making a list of the taxpayer's property and fixing its valuation, and is *quasi* judicial."

A case almost directly in point is *Van Cleve* v. *The Commissioners*, 71 New Jersey Law 574. In this case the act under consideration authorized the levying of a sewer tax on a district in an amount, depending solely on the judgment and discretion of a commissioner, up to nine million dollars for construction and in an unlimited amount for maintenance. The ratio of assessment for maintenance was to be based on the amount of sewage discharged into the sewers. It was held that the act was unconstitutional and invalid as an attempted delegation of the legislative function of determining the amount of the tax. The court said at page 581:

> "Every system of taxation consists of two parts —the elements that enter into the imposition of the tax and the steps taken for its assessment and collection. The former is a legislative function, con-

> served by constitutional prescriptions; the other is mere machinery. The latter may be delegated to other than governmental agencies; not so the former. Matters of computation, appraisement, adjustment and such like, involving mere certainty of detail, follow the delegable power, * * *; but no element that enters essentially into the tax itself may be so delegated (citing *State* v. *Sickles,* 4 Zab. 125; *State* v. *Koster,* 9 Vroom 308; and *Munday* v. *Rahway,* 14 *Id.* 339) * * *: 'These decisions are precedents in our own courts, affirming the want of power in the legislative body in which the power of taxation is vested to delegate the authority to others to determine in its judgment or discretion the amount to be raised by taxation'."

And again at page 583:

> "* * * this court is unequivocally committed to the doctrine that the legislature of this state, in which the governmental power of taxation resides, does not possess the power to delegate * * * the authority to determine, in its judgment or discretion, the amount to be raised by taxation, to which obviously must be added that such authority is in effect so delegated if such body may be empowered to levy taxes to the amount of an indebtedness to be incurred by it in its judgment or discretion."

In *Parks* v. *Board of Commissioners,* 61 Fed. 436, a case holding invalid an attempted delegation of the duty to levy special assessments, at page 437, appears the following language:

> "Local assessments are an exercise of the taxing power. * * * The rule that legislative authority cannot be delegated applies to local assessments, the same as to other taxes * * *.

* * * Can a tax be arbitrarily forced upon the taxpayers of a county, either by individuals or by officials in whose appointment they have no voice? The power of taxation is a power inherent in all governments. In a constitutional government, the people, by the constitution, confer it on the legislature. It is one of the highest attributes of sovereignty. It includes the power to destroy. It appropriates the property and labor of the people taxed. Unrestrained power of taxation necessarily leads to tyranny and despotism * * *.

* * * Of all the powers of government the one most liable to abuse is the power of taxation. If placed in hands irresponsible to the people of the district to be taxed, its abuse is a mere question of time. * * * There is no limit to the cost of these improvements, and the taxpayer is absolutely without means to check or control abuses that naturally follow arbitrary and irresponsible power over the property of others. The act is a plain violation of the principle of self-taxation, and a clear invasion of the right of property. The people, by the constitution, did not authorize the legislature to so jeopardize the right of property. The legislature is not the fountain—not the source—of power. Under our system of government the legislature can exercise only such powers as the people have delegated to that body, either expressly or by necessary implication, by the constitution. All rights not so delegated are retained by the people. The right to life, liberty, and property is among the inherent and inalienable rights that the people did not commit to the legislature. Constitutions are adopted and governments administered for the protection, and not for the destruction, of these reserved rights of the people. *People* v. *Morris*, 13 Wend. 328; 1 Blackw. Tax Titles, §§15, 16. Illegal or oppressive taxation is destructive of

> the right of property, and is not government, under the constitution; but is misgovernment."

The best that can be said for Act No. 49 of 1921 is that the legislature desired to get money from the respondents and was not considering any constitutional limitations on the methods to be applied.

The Legislature neither fixed a flat rate of taxation per acre of land, per acre foot of water, nor did it fix the total amount of the tax to be levied.

The Treasurer determined the number of acres receiving water, whether included in the irrigation district or receiving water under contracts such as those of the respondents.

The amount of the tax was wholly fixed by an estimate made either by the Commissioner of the Interior or by his subordinates and certified by him. That his estimate need not be exact is shown by the provision in Section 2 that there should be deducted from his estimate any surplus from the preceding year, or added to his estimate any deficit from the preceding year.

Petitioner claims the tax in question to be a special assessment. It bears none of the ear-marks of a special assessment.

It is elementary that the basis of any special assessment is a corresponding benefit conferred by the taxing authority. In *McQuillan on Municipal Corporations*, Vol. V, at page 4378, the author says:

> "* * * the fundamental theory that must be adhered to in imposing special assessments on property, and from which alone the right is derived to impose such assessments, is that such property derives a benefit from such improvement commensurate with the amount of the assessment imposed upon it."

A violation of this principle in levying a special assessment constitutes the taking of property without due process of law.

In *Thomas* v. *Gain*, 35 Mich. 155, at page 162, the court says:

> "But it is generally agreed that an assessment levied without regard to actual or probable benefits is unlawful, as constituting an attempt to appropriate private property to public uses."

If a special assessment for a public improvement exceeds the value of the benefit to the property assessed, it constitutes, as to the excess, a taking of property without due process of law. (5 *McQuillan on Municipal Corporations*, pp. 4455-4457.) This principle the Public Irrigation Law recognizes with regard to all properties *included within the irrigation district.*

The tax assessed under Act. No. 49 of 1921 on respondents' lands will vary from year to year and will necessarily have no relation to the year by year benefits from the use of the water.

In theory the benefits accruing to property from a betterment supporting a special assessment tax must be fixed before the tax is assessed. The Irrigation Law did not fix these benefits but provided that whatever the cost was and whatever the ratio between benefit and cost, nevertheless the total cost not only of construction but of operation must be borne by the properties included in the permanent irrigation district. The total cost of the improvement was therefore assessed against the lands in the permanent irrigation district. From that time on no other tax could be levied by way of a special improvement tax for the expense of constructing and operating the irrigation system.

Nevertheless, Act No. 49 of 1921, which is the law in question here, attempts to fasten on the respondents' land a part of the cost of construction and operation, the payment of which in full had theretofore been assessed or provided to be assessed against the property in the permanent irrigation district.

It is well settled in the law of taxation that property shall not be taken under a tax levy without the taxpayer having had an opportunity to be heard. A hearing is a necessary element of that due process which is guaranteed.

In *Londoner* v. *Denver*, 210 U. S. 373, the court dealt with a special assessment for the cost of paving a street upon which the taxpayer's property abutted. No provision was made in the law for a hearing, and this court said at page 385:

> "* * * where the legislature of a State * * * commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

To the same effect is *Charles* v. *Marion*, 100 Fed. 538, 543.

Act No. 49 of 1921 makes no provision for notice, hearing or appeal. It does not concern itself with the actual benefits to be received year by year, and the Legislature had no intention of having the tax based upon benefits received. The sole purpose of the Legislature was to penalize the respondents.

The Irrigation Law provided for this hearing, and provided for review by the courts. Act No. 49 of 1921 does not, and this omission is not saved by the provisions of Sections 308 and 310 of the Political Code (Compilation of the Revised Statutes and Codes of Porto Rico, Sections 2960 and 2962) which do not deal with special assessments.

Counsel for petitioner has not pointed to a single case where it has been held that an administrative official can determine the amount which will be levied year by year for the maintenance of a public improvement, which amount shall be assessed by the tax collecting authority upon property selected by another administrative official. Many statutes provide that health authorities, school authorities or police authorities shall determine what amount is needed for health, school or police purposes, and require the local taxing authority to include that amount in the amount to be raised by taxes, but in that case the amount of the tax levy is fixed not by the health, school or police board but by the municipal legislative authority which determines the total amount to be assessed for all municipal purposes and assesses it.

The cases of *Van Cleve* v. *The Commissioners, supra,* and *Parks* v. *Board of Commissioners, supra,* are determinative of the question here involved.

Conclusion.

Petitioner in giving reasons why this court should grant the writ of certiorari does not feel bound by the record.

On page 15 of the petition it says:

> "The rich and powerful sociedad respondent in this case is not, by any means, the only one of its

kind, owning property and doing business in the Island, but composed exclusively of foreign members."

It does not appear from the record that the respondent partners are rich or powerful, nor that there are any partnerships of a similar character in Porto Rico. It is astounding, however, that the Attorney General of Porto Rico, the Judge Advocate General of the Army and two officers of the Judge Advocate General's Department of the Army, should refer to a partnership, four of the members of which are Americans, as "foreign."

The Federal court in Porto Rico was established for the purpose of assuring to citizens of the United States and foreigners not domiciled in Porto Rico a tribunal free from local prejudice. In the District Court of the United States for Porto Rico there is such a tribunal.

Is there any reason why English speaking citizens of the United States should not be able to try their cases in a court where English is the official language? Why should they be compelled to try their cases in courts where Spanish is the only language used?

This court is not concerned with the vulnerability in case of attack of the Porto Rico Irrigation Law. Suits for the repayment of moneys collected as taxes in Porto Rico can only be brought if the taxes were paid under protest. There is nothing in the record to show that any taxes levied under the Irrigation Law have been paid under protest.

Respondents are entitled to have their litigation decided upon the issues in that litigation. They are not concerned with what might happen to the People of Porto Rico if in

some other forum and at some other time it should be held that the Irrigation Law of Porto Rico is defective.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

FRANCIS E. NEAGLE,
Attorney for Respondents.

New York, November, 1932.

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 492.

THE PEOPLE OF PORTO RICO, *Petitioner,*

vs.

RUSSELL & CO., Sucrs., S. en C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, *et al., Respondents.*

BRIEF FOR RESPONDENTS.

FRANCIS E. NEAGLE,
Attorney for Respondents.

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 492.

THE PEOPLE OF PORTO RICO,

Petitioner,

vs.

RUSSELL & CO., SUCRS., S. en C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS.

Nature of the Case.

There is before the court for review on certiorari the judgment of the Circuit Court of Appeals for the First Circuit entered on June 27, 1932 (R. 93), rehearing denied August 5, 1932 (R. 94). The case is reported in 60 Fed. (2nd) 10.

The judgment of the Circuit Court of Appeals affirmed the judgment of the District Court of the United States for Porto Rico entered December 21, 1931 (R. 69), dismissing on the merits a complaint seeking to recover $61,617.04, with interest thereon, alleged to be due under an Act of the Legislature of Porto Rico No. 49, approved

July 8, 1921, entitled "An Act fixing a tax on certain lands using waters from the Southern Coast Public Irrigation System, on which lands no tax whatsoever was levied under the Public Irrigation Law, and for other purposes" (Laws of Porto Rico 1921, p. 366).

The case was tried by stipulation before the District Judge without a jury upon an agreed statement of facts. No special findings of fact were made by the court, but merely a general finding that "upon the issues herein joined the court finds for the defendants and against the plaintiff" (R. 68).

The District Court held (R. 68):

1. That Act No. 49 of 1921 impairs the obligations assumed by the Government of Porto Rico under the contracts of August 26, 1914 (hereinafter described) and that those contracts are binding upon the People of Porto Rico.

2. That in so far as said Act applies to respondents, the same constitutes the taking of private property without due process of law.

3. That in so far as respondents are concerned, said Act violates the requirement of the Organic Act of Porto Rico (39 Statutes at Large 951) that the rule of taxation in Porto Rico shall be uniform.

4. That said Act is in conflict with the Treaty of Paris (Malloy, Treaties Vol. 2, p. 1690).

5. That said Act violates the prohibition of the Organic Act against unequal protection under the law.

6. That said Act is void for the reason that it delegates to administrative officers the legislative function of levying taxes.

7. That said Act is void in that it does not provide for any hearing or appeal before the taxes become fixed.

The Circuit Court of Appeals affirmed the judgment upon the ground that Act No. 49 of 1921 impairs the obligations of the contracts of August 26, 1914 (R. 89), and that it is void for the reason that it delegates to administrative officers the legislative function of levying taxes (R. 90).

The suit had been originally brought in the Insular District Court of the Judicial District of San Juan (R. 76) and was removed from that court to the District Court of the United States for Porto Rico. The Circuit Court of Appeals also held (R. 85) that this removal was properly made, holding that where the jurisdiction of a Federal court over a suit brought against a partnership depends upon diversity of citizenship, the question is to be determined by the citizenship of its members whether under the law of the place of its origin it is regarded as an entity and may sue or be sued in its partnership name.

Historical Statement.

When the Guayabal Dam (a unit in the Porto Rican south coast irrigation system) which impounds the waters of the Jacaguas River naturally flowing into the Caribbean Sea on the southerly side of the Island of Porto Rico, was being constructed in 1914, the People of Porto Rico made separate contracts with respondents' predecessor in title, Fortuna Estates, and with its lessors, José A. Poventud and others, owners of various ancient concessions to take water (both ordinary flow and torrential) from the Jacaguas River. By these contracts the Government agreed after the irrigation system was in operation to deliver the

water of the Jacaguas River to which the respondents are entitled from the water of that river stored behind the Guayabal Dam. Some of the water was to be let down the river in regular daily amounts and some to be taken if a surplus of it was found in the bed of the river.

Difficulties arose between the Government and the respondents as to the surplus water in the river bed covered by the contract with Fortuna Estates, the Government of Porto Rico claiming the right to sell it and the respondents denying that right. Respondents' contention was upheld by the District Court of the United States for Porto Rico and by the Circuit Court of Appeals for the First Circuit (*People of Porto Rico* v. *Russell & Co.*, 268 Fed. 723).

The Circuit Court of Appeals held that the old concessions are suspended while the contract in question remains in force, and that respondents' right to irrigation water while the dam exists depends solely on the contract.

After the decision of the Circuit Court of Appeals in October, 1920, the Legislature of Porto Rico passed Act No. 49 of 1921 (Laws of Porto Rico, 1921, p. 366), the avowed purpose of which is to compel the respondents to pay a special tax for the water which they receive by way of exchange under the contract with the Government of Porto Rico as is shown by the first section of the law, which reads as follows:

> "That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system."

In a suit commenced by the respondents in 1924 in the District Court of the United States for Porto Rico the Government was enjoined in June, 1926, from attempting to collect any tax under Act No. 49 of 1921. The Government appealed, and while the appeal was pending, Congress passed the Act of March 4, 1927 (44 Statutes at Large, 1421), which amended Section 48 of the Organic Act, by inserting therein the provision:

> "That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the District Court of the United States for Porto Rico."

This court held in *Smallwood* v. *Gallardo,* 275 U. S. 56, that all tax injunction cases pending at the time of the passage of the Act of March 4, 1927, whether in the District Court or on appeal, abated. Following the decision of this court, the Circuit Court of Appeals dismissed the injunction suit for want of jurisdiction (*Gallardo* v. *Havemeyer,* 21 Fed. (2d) 1012) (R. 67, ¶24).

On April 23, 1928, Congress passed an act for the relief of taxpayers whose suits had been dismissed by reason of the decision in *Smallwood* v. *Gallardo, supra.* This Act (45 Statutes at Large, 447) is as follows:

> "That if in any suit pending March 4, 1927, but since abated or dismissed solely by reason of the provisions of the Act entitled 'An Act to amend and reenact sections 3, 20, 31, 33, 38 and 48 of the Act of March 2, 1917, entitled "An Act to provide a civil government for Porto Rico, and for other purposes," as amended by an Act approved June 7, 1924, and for the insertion of a new section in said Act between sections 5 and 6 of said Act, to be designated as "5a"

> of said Act,' approved March 4, 1927, the taxpayer had prior to such date obtained an injunction restraining the assessment or collection of any tax imposed by the laws of Porto Rico after trial on the merits in the District Court of the United States for Porto Rico, or if in any such suit on appeal to the United States Circuit Court of Appeals for the first circuit the right of any taxpayer to an injunction restraining the assessment or collection of any tax imposed by the laws of Porto Rico had been decreed, the treasurer of Porto Rico shall enforce the collection of the tax so enjoined or decreed by a suit at law instead of by attachment, embargo, distraint, or any other form of summary administrative proceeding. Notwithstanding the provisions of any existing statute of limitations, any such suit may be instituted at any time not later than one year after the approval of this Act."

From and after the passage of this Act the People of Porto Rico could collect the taxes in issue here only by virtue of this United States statute, and this suit was brought under and because of that statute.

Statement of Facts.

Respondents, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, Frank M. Welty and H. B. Orde, are co-partners doing business under the firm name and style of Russell & Company, Sucesores, S. en C.

The partners own four tracts of land lying along the Jacaguas River known as Haciendas Fortuna, Cristina, Luciana and Serrano. They sublease from José A. Poventud and others two other tracts of land on the Jaca-

guas River known as the Haciendas Union and Placeres (Statement of Facts, §§2, 4, 12, 14, R. 60).

Appurtenant to each of these properties by virtue of certain concessions and royal decrees of the Kingdom of Spain and by user and prescription, are rights to take water for irrigation purposes from the Jacaguas River (Statement of Facts, §§5, 13, R. 60, 63). Respondents and their predecessor in title and their lessors had been for more than twenty years prior to August 6, 1914, taking and using water from the Jacaguas River for the irrigation of these haciendas whenever physically possible up to the aggregate amount of the concessions. This water was taken from the bed of the river through intakes built for that purpose (Statement of Facts, §§6, 15, R. 61, 64).

There are also appurtenant to all of these properties by reason of concessions and royal decrees of the Kingdom of Spain and by user and prescription rights to take for irrigation purposes torrential waters which may exist in the Jacaguas River without limit as to quantity, except as limited by the size and location of the torrential intakes established by virtue of the said concessions, royal decrees, user and prescription (Statement of Facts, §§7, 16, R. 61, 64).

The People of Porto Rico undertook the construction of a public irrigation system on the south coast of Porto Rico in accordance with the provisions of the Public Irrigation Law approved September 18, 1908 (Laws of Porto Rico 1908, Special Session, p. 44), as amended in 1911 (Laws of Porto Rico 1911, p. 237), and as further amended in 1913 (Laws of Porto Rico, Extraordinary Session 1913, p. 54). In the course of the work Porto Rico erected a dam for the impounding and storage of a part of the waters of

the Jacaguas River and of the Toro Negro River, which is known as the "Guayabal Dam" and extends across the bed of the Jacaguas River above the intakes which the respondents used for taking water for the irrigation of their properties (R. 30, Statement of Facts, §8, R. 62).

The Irrigation Law provided that the People of Porto Rico could condemn existing water rights (Laws of Porto Rico, Special Session 1908, Sec. 12, p. 52), in which case the fair value thereof would have been paid in cash to the owners. It was also provided that the owners of water rights could relinquish their concessions, have them valued either by mutual agreement or in the manner provided in the Irrigation Law and be paid the amount agreed upon, not in cash but by receiving credits upon their proportionate part of the expense of the construction and operation of the dam (Laws of Porto Rico 1908, Special Session, Sec. 12, p. 52; Sec. 15, p. 54; Laws of Porto Rico, Extraordinary Session 1913, Sec. 2, pp. 54, 56; Sec. 7, pp. 61, 63). If water rights were not condemned or relinquished, Sec. 13 of the Act of 1913 (Laws of Porto Rico, Extraordinary Session 1913, p. 72) provided:

> "Section 13.—In the case of any land carrying a water right or concession of which the source of supply is destroyed or impaired by the construction or operation of the irrigation system, which shall not have been relinquished or surrendered to The People of Porto Rico, such land shall be entitled to receive from the irrigation system an amount of water which is the reasonable equivalent in value of the said water right or concession.
>
> The Commissioner of the Interior is hereby authorized to negotiate with the owner or owners of such water rights or concessions, and with the owner

> or owners of any water rights or concessions heretofore relinquished or surrendered on condition that the lands to which they are appurtenant should form part of the irrigation district, and which lands have not been included by the Irrigation Commission, and the said Commissioner of the Interior shall be empowered to enter into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the lands to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof, with the power on behalf of the Irrigation Service to enter into agreement with such owner or owners for the relinquishment to The People of Porto Rico of such water rights or concessions, and for the delivery to the lands to which the said water rights or concessions are appurtenant of such fair equivalent. Before entering into any such agreement the Commissioner of the Interior shall consult the Attorney General of Porto Rico as to the validity and legal status of the water rights or concessions involved. * * *"

Respondents' predecessor in title and lessors refused to relinquish their concessions and they were not condemned by the Government (Statement of Facts, §§9, 17, R. 62, 64). In view of such refusal the People of Porto Rico, acting in accordance with the provision of the Irrigation Law above quoted, entered into negotiations with Fortuna Estates and with the owners of the Haciendas Union and Placeres for the purpose of fixing the amount of water and the time, place and conditions of delivery thereof which the owners were to take after the Guayabal Dam was completed and in operation.

As a result of such negotiations it was agreed between the representatives of the Government and the owners that the water to which the haciendas were entitled by reason of the concessions, royal decrees, user and prescription—the validity and effect of which the Government did not attack and thereby admitted—should be taken thereafter partly in regular daily amounts, which were appreciably less than the amounts specified in the concessions and varied in the case of each property, depending upon the age of the concession, and the balance not delivered daily should be taken from any surplus waters that might exist in the Jacaguas River at certain specified places (Exhibit A, §§First, Second, Third, R. 31 ff.; Exhibit B, §§First, Second, Third, R. 47 ff.). The contracts also provided that torrential waters could be taken from the Jacaguas River, but the Government was not restrained from holding behind the Quayabal Dam such torrential waters as it was legally entitled to restrain (Exhibit A, §Fourth, R. 33; Exhibit B, §Fourth, R. 48).

Formal contracts covering the agreement of the parties were entered into on August 26, 1914 (R. 28, 44). The contract with Fortuna Estates was protocolized on June 8, 1915 (R. 27).

The two contracts are alike except for a variation in names and amounts. The material portions of the contract copied from the Fortuna Estates contract are as follows (R. 30 ff.):

> "Whereas, The People of Porto Rico has authorized and undertaken the construction of a public irrigation system, in accordance with the Public Irrigation Law approved September 18, 1908, and the amendments thereto, and has recently, in the construction of the said irrigation system, erected a

dam (known as the Guayabal Dam), across the bed of the said Jacaguas River above the said intakes which the said Fortuna Estates uses for taking water for irrigating its said four tracts of land in accordance with its said claim of right and The People of Porto Rico proposes to use the said dam for the impounding and storage of a part of the waters of the River Jacaguas and of the River Toro Negro, a stream rising on the north side of the main watershed of the Island of Porto Rico, whereby the source of supply of the waters which the Fortuna Estates claims to be entitled to by reason of the aforesaid concession, royal decrees and user for the irrigation of the four tracts of land aforesaid, may be interrupted and impaired; and

Whereas, said water rights and concessions have not been relinquished or surrendered to The People of Porto Rico, and said Fortuna Estates is unwilling to enter into any agreement or arrangement for the relinquishment or surrender of the said water rights and concessions; and

Whereas, the amount of water taken by the Fortuna Estates and its predecessors in title for the irrigation of said four tracts of land under its said claims of water rights varies from month to month in accordance with the rainfall in the watershed of the said Jacaguas River, so that it is impossible to determine in advance the exact amount of water to which the Fortuna Estates is entitled under the said claimed water rights for any fixed period of time, and The People of Porto Rico (notwithstanding the construction and operation of said Guayabal dam), is ready to deliver from the said Jacaguas River to the said Fortuna Estates the amount of water to which the latter may be entitled under its said concessions, but, in order to facilitate and make more certain the operation of the said dam and the

irrigation system of which it is a part, desires t
determine and agree upon an amount of wate
which, delivered regularly, may under all attendin
circumstances, be considered to be fair equivalen
in value for irrigation purposes of the amount o
water which the Fortuna Estates would under ordi
nary circumstances take and use under the sai
water rights and concessions; and

Whereas, the Commissioner of the Interior i
authorized and empowered, by Section 13 of th
amendment to the Public Irrigation Law, approve
August 8, 1913, after consulting with the Attorne
General of Porto Rico as to the validity and lega
status of the said water rights or concessions, t
enter, on behalf of The People of Porto Rico, int
agreement with the owner of the said water right
or concessions upon an amount of water equivalen
to the water taken and used under said water right
and concessions and as to the time, place and cond
tions of delivery thereof to the lands to which th
said water rights or concessions are appurtenant
and

Whereas, the Attorney General of Porto Rico ha
been duly consulted, as provided by said Act;

Now, therefore, in consideration of the premise
and of the covenants and agreements on the part o
each party hereinafter contained, said Acting Com
missioner of the Interior, in representation and o
behalf of The People of Porto Rico, do hereby cove
nant and agree as follows:

First. The parties hereto hereby agree that th
quantities of water specified in this paragraph, deliv
ered uniformly through the year, subject to the term
and conditions specified in this agreement, togethe
with the additional water the right to take which i
provided for or reserved in paragraphs Third an

> Fourth hereof, are the fair equivalent in value of the water which the said Fortuna Estates takes under and pursuant to the concessions and water rights claimed by it, and The People of Porto Rico will, subject to the conditions and limitations hereinafter specified and at the times, places and subject to the conditions of delivery hereinafter provided for, make delivery to the Fortuna Estates, for the irrigation of the said tracts of land hereinabove referred to, of the said amounts of water,''

The above excerpt shows that the Government of Porto Rico admitted the rights of the concession holders, and in order "to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part" agreed to deliver part of the water which respondents' predecessor in title and lessors owned, but not exactly as they had been receiving it in the past either in amount or at the same places in all cases. To cover the full amount of concession water which the concession owners were entitled to, the Government granted them the right to take additional amounts of water from the bed of the Jacaguas River at the Aruz Pump if surplus water was available there, provided, however, that if the Government undertook the development and utilization of such surplus waters in the Jacaguas River, the right of the owners was limited to an amount which equalled the difference between the amounts which they were entitled to take under the concessions and the amounts which they took under the contract in regular daily deliveries.

In addition, the concession owners reserved the right to take torrential waters from the Jacaguas River, but this reservation, it was provided, should not limit the Govern-

ment from restraining torrential flood waters if legally entitled to do so in the reservoir above the Guayabal Dam.

Subsequently the Government attempted to sell the surplus water belonging to the respondents, as successor in title to Fortuna Estates, which collected at the Aruz Pump and which the respondents were entitled to take both under their concessions and under the contract, with the result that suit was brought to enjoin the sale of such water and a final decree enjoining such sale was entered in the District Court of the United States for Porto Rico. On appeal to the Circuit Court of Appeals for the First Circuit, the decree granting the injunction was affirmed (People of Porto Rico *v.* Russell & Company, 268 Fed. 723).

In that suit respondents claimed the right to take this surplus water at the Aruz Pump by virtue of the old Spanish concessions and also by virtue of paragraph Third of the contract of August 26, 1914 (R. 33). The Circuit Court of Appeals held, however, that the old Spanish concessions are, while the contract remains in force, suspended, and that respondents' right to the water in question depended on the contract. That decision is binding upon the Government of Porto Rico. It was handed down on October 28, 1920.

At the next session of the Legislature of Porto Rico which convened on February 14, 1921, the Legislature passed Act No. 49 (Laws of Porto Rico 1921, p. 366), the purpose of which was to set at naught the contract between the People of Porto Rico and respondents' predecessor in title though it had been held valid by the Circuit Court of Appeals, and to nullify the old Spanish concessions, the validity of which has never been attacked, by making the respondents pay a special tax for the construction, mainte-

nance and operation of the irrigation system, to which they had not contributed before by reason of the fact that as their concessions had neither been condemned nor valued by agreement, their lands were not and could not be included in the irrigation district which was formed and the land in which was to pay for the expense of construction and operation of the irrigation system. The Government had not compensated the respondents for their water rights, but the Government sought by this law nevertheless to compel them to pay as those others paid who had had their concessions condemned or valued by agreement. The law is expressly directed against the owners of land having concessions recognized as valid and without whose consent the Guayabal Dam and reservoir could never have been put into operation.

The law seeks to tax the six estates covered by the two contracts of August 26, 1914. None of them received or receive water from the irrigation system for the contracts provide that the Government of Porto Rico "is ready to deliver from the *said Jacaguas River*" to respondents' predecessor in title and lessors the amount of water to which they were entitled under their concessions. There is no evidence of any kind anywhere in the record that in the delivery of this water a single facility of the irrigation system is used except that the water of the Jacaguas River to which respondents are entitled and which the Government agreed to deliver is held back by the Guayabal Dam.

None of them received the slightest bit of benefit from the irrigation system for the contracts of August 26, 1914, set forth in unmeasured words (quoted above) the express agreement of the parties that the water to be delivered after the Guayabal Dam was in operation was, considering the

changed circumstances and the possibility of greater uniformity of delivery, nothing more than the fair equivalent in value of the water which the concessionaires were entitled to take under the old Spanish concessions. This fair equivalent was approximately twenty-five per cent. less than the water which the respondents were entitled to take under their concessions for ordinary flow. They practically gave up their right to take torrential waters for which no equivalent was given by the Government.

The record is entirely documentary, consisting of the pleadings, an agreed statement of facts and the contracts between the concession holders and the Government.

POINT I.

The District Court of the United States for Porto Rico had jurisdiction and the amended motion to remand was properly denied.

Sections 41 and 42 of the Organic Act (39 Statutes at Large 965; 48 U. S. C. A. §§ 863, 864) in their pertinent parts provide:

> "Section 41.—That Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' * * * The district court for said district shall be called 'the District Court of the United States for Porto Rico,' * * * Such district court shall have jurisdiction of all cases cognizable in the district courts of the United States, and shall proceed in the same manner. * * * Said district court shall have jurisdiction of all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State,

Territory, or District of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of $3,000, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid. * * *

Section 42.—That the laws of the United States relating to appeals, writs of error and *certiorari*, removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico. * * *"

Sections 41 and 71 of Title 28 of the United States Code (36 Statutes at Large 1091, 1094; 28 U. S. C. A. 41, 71), in their pertinent parts are as follows:

"Sec. 41. The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects * * *.

Sec. 71. Any suit of a civil nature, at law or in equity arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original juris-

> diction, in any State court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district. Any other suit of a civil nature, at law or in equity, of which the district courts of the United States are given jurisdiction, in any State court, may be removed into the district court of the United States for the proper district by the defendant or defendants therein, being nonresidents of that State. * * *"

Petitioner's amended motion to remand proceeded upon two grounds, one that the respondents constitute a Porto Rican civil partnership organized under the provisions of the Civil Code of Porto Rico; that this civil partnership has a juridical personality independent of the personality of its individual members, and hence there was no diversity of citizenship; and the other that the petitioner is the People of Porto Rico, which is said to be neither a citizen nor a subject, and therefore no diversity of citizenship exists.

The second ground was not pressed in the Circuit Court of Appeals nor was it pressed in the petition for the writ of certiorari.

Section 41 of the Jones Act, *supra*, extends the jurisdiction of the District Court of the United States for Porto Rico beyond that conferred upon District Courts of the United States in the continental United States. Jurisdiction in the true District Courts of the United States (*Balzac* v. *People of Porto Rico*, 258 U. S. 298, 312) upon the ground of diversity of citizenship is conferred where the suit is "*between* citizens of different States" or "*between* citizens of a State and foreign States, citizens, or subjects." The wording of Acts of Congress providing for jurisdiction of the District Courts on the ground of diversity of citizenship has been many times interpreted by the courts, and

Congress is presumed to be aware of those interpretations, hence when Congress came to define the jurisdiction of the District Court of the United States for Porto Rico it first conferred upon it *all* the jurisdiction that Federal courts in continental United States had, and then proceeded to enlarge it.

Congress did not enlarge the jurisdiction so as to take in cases "*between* citizens or subjects of a foreign State or States or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico," for such words might have prevented the People of Porto Rico from suing in the United States District Court there. Congress said that the enlarged jurisdiction of the District Court of the United States for Porto Rico should exist "where *all* of the parties *on either side* of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico." The intention of Congress by its words is plain in view of the legislative knowledge of the decisions of the courts.

Section 41 of the Jones Act was construed by this court in *Porto Rico Railway Light & Power Company* v. *Mor*, 253 U. S. 345, where the court said, at page 348, that

> "suit may be brought in the District Court if either party has the jurisdictional qualifications; that is, the act confers upon such party not merely the right to sue but the liability to be sued."

Under Section 41 of the Organic Act, therefore, it makes no difference whether the People of Porto Rico is or is not a citizen. The People of Porto Rico could have sued the respondents in the District Court of the United States for

Porto Rico originally and despite the rule in *People of Porto Rico* v. *Rosaly*, 227 U. S. 270, this court has indicated that in certain kinds of cases the People of Porto Rico might be sued (*People of Porto Rico* v. *Ramos*, 232 U. S. 627; *Richardson* v. *Fajardo Sugar Company*, 241 U. S. 44).

In the Foraker Act, the original Organic Act (31 Statutes at Large, 77, amended by the Act of March 2, 1901, 31 Statutes at Large, 953) it was provided that the District Court of the United States for Porto Rico should have jurisdiction in controversies "where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States." This wording, with the wording of Section 41 of the Jones Act set forth above, clearly shows that Congress intended the District Court of the United States for Porto Rico to have jurisdiction where all the parties on *one* side are within a certain defined class, and has never required, as it has in the case of the jurisdiction of true United States District Courts, that the parties on *both* sides shall come within a certain defined class.

The same questions with regard to jurisdiction that are raised in this case were raised by the People of Porto Rico in its petition for certiorari in the case of *People of Porto Rico* v. *Fortuna Estates*. This petition was denied (259 U. S. 587).

Petitioner asks this court to overthrow the long established rule that in the Federal courts the citizenship of a partnership is for purposes of jurisdiction the citizenship of its individual members, whether under the law of the place of its origin the partnership is regarded as an entity and may sue or be sued in its partnership name. *Chapman* v. *Barney*, 129 U. S. 677, 682; *Great Southern Fireproof*

Hotel Co. v. *Jones,* 177 U. S. 449, 455; *McLaughlin Bros.* v. *Hallowell,* 228 U. S. 278; *Bruett & Co.* v. *Austin Drainage Excavator Co.,* 174 Fed. 668; *Columbia Digger Company* v. *Rector,* 215 Fed. 618; *Empire Rice Mill Co.* v. *Neumond,* 199 Fed. 800; *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500, 505 (certiorari denied 259 U. S. 587); *Goico* v. *Russell & Co.,* 4 Fed. (2d) 7.

The only decision contrary to the above cases is *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong,* 14 Fed. 615, a Louisiana case, but that case was expressly repudiated by the same court in *Empire Rice Mill Co.* v. *Neumond, supra.* Both of these cases dealt with the civil law concept of a partnership as distinct from the common law concept.

Petitioner says that a Porto Rican partnership is not the same as an American partnership and that a Porto Rican limited partnership is more nearly analagous to a corporation than to a partnership. It claims that because a limited partnership is created by an agreement, because it may be created for a term which will not expire on the death or withdrawal of individual partners, because the general partners alone manage the affairs of the partnership, because the Porto Rican law makes it a juridical entity and because the members of the limited partnership may limit their liability, that, therefore, it is a corporation to all intents and purposes and should come within the rule laid down in *Louisville, etc., Railroad Co.* v. *Letson,* 2 Howard 497, that for Federal jurisdictional purposes the stockholders of a corporation are conclusively presumed to be citizens of the state under whose laws the corporation was created.

Porto Rican limited partnerships are no different in the respects pointed out above from limited partnerships in the United States. All of the things which may be done in the articles of a limited partnership in Porto Rico may be done in many of the states of the Union (Laws of New York 1919, Chapter 408, Sections 90 ff.; General Laws of Massachusetts 1921, Vol. 1, p. 1070; Compiled Statutes of New Jersey, Vol. 3, p. 3916; 2 Purdons Digest Pa., 13th Edition, p. 2299).

To support its claim petitioner attempts to retranslate various sections of the Code of Commerce and the Civil Code of Porto Rico, and wherever it finds the word "*sociedad*" or the word "*collectiva*" or the word "*comanditaria*" or the word "*anonima*" it declines to translate them as they have always been translated as "partnership," "general partnership," "limited partnership" and "corporation," respectively, but says the words cannot be translated into English.

Are all the legislators, translators, commentators and lawyers wrong?

Uniformly the words mentioned above are translated as "partnership," "general partnership," "limited partnership" and "corporation." Thus are they translated in the official text of the "Compilation of the Revised Statutes and Codes of Porto Rico," published in 1913 as Senate Document No. 813, 61st Congress. They are so translated in the English version of the Civil Code of Porto Rico, revised, adopted and published under the provisions of Joint Resolution No. 18 of 1930 (Laws of Porto Rico 1930, p. 616) by the Legislative Joint Commission created by Porto Rican Act No. 50 of 1928 (Laws of Porto Rico 1928, p. 320). This translation shows that all the members of the

Joint Commission were Bachelors or Doctors of Law, and that the Secretary of the Commission was a Bachelor of Law.

Walton in "The Civil Law in Spain and Spanish America," published in 1900 in Washington by W. H. Loudermilk & Co., translates the word "*sociedad*" always as "partnership" (p. 422).

In "The Argentine Civil Code," an official publication of the Comparative Law Bureau of the American Bar Association, published in 1917 by the Boston Book Company, Frank L. Joannani, the translator, translates the word "*sociedad*" uniformly as "partnership" (p. 260).

In "The French Civil Code," which is very similar to the Spanish Civil Code, the word "*société*" takes the place of the word "*sociedad.*"

E. Blackwood Wright, an English lawyer, was the Chief Justice of Seychelles, where the Code Napoleon was in force. In his "The French Civil Code," published in London by Stevens & Sons, Ltd., in 1908, he uniformly translates the word "*société*" as "partnership" (p. 342).

Can it be that words uniformly translated by Porto Rican, English and American lawyers into perfectly good legal English have suddenly become so different in legal meaning that they cannot now be translated?

Can it be, as inevitably follows from petitioner's contention, that there is under the civil law no partnership of any kind?

Petitioner's contentions run exactly counter to the record. The case was tried upon an agreed statement of facts, which says (R. 59):

> "Come now the parties by their undersigned attorneys and, for the purpose of the trial of this

action by this court and any and all appeals taken herein, stipulate and agree upon the following statement of facts:

* * * * * *

2. That the defendants, Horace Havemeyer, Frank A. Dillingham, Edward S. Paine, Edwin L. Arnold, H. B. Orde and Frank M. Welty, now constitute and at the time of the institution of this suit constituted the *civil agricultural limited partnership* of Russell & Co., Sucesores, S. en C. (formerly Russell & Co., S. en C.) organized under the laws of Porto Rico; that at all such times said Frank A. Dillingham was and is a citizen and resident of the State of New Jersey; said Horace Havemeyer, a citizen and resident of the State of New York; Edward S. Paine, a citizen and resident of the State of New York; Edwin L. Arnold, a citizen and resident of the State of Florida; Frank M. Welty, a citizen and resident of the State of Ohio, and H. B. Orde, a citizen of Great Britain and a resident of the Dominion of Canada" (Italics ours).

This stipulation was signed by James R. Beverley, Attorney General of Porto Rico and the present Governor of Porto Rico, who is an American, of which fact this court will take judicial notice. The stipulation is in English. There was no need for translation. The stipulation was made after the motion to remand.

The original complaint (R. 76) sets forth:

"The defendant is a *civil limited partnership* organized under the laws of Porto Rico. According to the information and belief of the plaintiff, the defendant firm or entity is made up of the following persons who have associated themselves for the

> carrying on of the business of cultivating sugar cane under the said name in general in Porto Rico: Frank A. Dillingham, Horace Havemeyer and William H. Morgan, as regular partners, and Frank M. Welty, Edwin L. Arnold and H. B. Orde, as silent partners, the plaintiff not knowing the residence and nationality of the stated persons'' (Italics ours).

This original complaint having been filed in the Insular District Court was probably in Spanish when filed. But the amended complaint was filed in the District Court of the United States for Porto Rico, and, therefore, was in English. It recites (R. 1):

> ''that the defendant is a *civil agricultural partnership* organized as a juridical entity under the civil laws of Porto Rico with capacity to sue and be sued'' (Italics ours).

In the amended motion to remand (R. 9) it is stated that

> ''* * * defendant in this case, as it appears from the complaint, is a *civil partnership* constituted under the provisions of the Civil Code of Porto Rico'' (Italics ours).

Petitioner quotes at length in its brief (p. 21) from the decision of the Supreme Court of Porto Rico in *People* v. *Rivera Zayas, District Judge,* 29 P. R. 423. The quotation is inapposite. The opinion was rendered on an appeal taken in the Insular Court from the order removing to the Federal Court the case reported as *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500 (certiorari denied, 259 U. S. 587). The Supreme Court of Porto Rico wrote an opinion in a matter which did not concern it, for it had no power

to pass upon a question of jurisdiction arising in the District Court of the United States for Porto Rico. It is interesting to note, however, that the court said (29 P. R. at 430), petitioner's brief page 23,

> "We need not, therefore, even decide in this case whether a *sociedad en comandita* is or is not a citizen."

All that the Supreme Court of Porto Rico held was that a *sociedad en comandita*—a limited partnership—is an entity distinct from the members that compose it and that as *the entity* was sued in the *Insular Court* and as it was organized under the laws of Porto Rico, *the entity* had no citizenship distinct from the People of Porto Rico or it had no citizenship at all.

A Porto Rico partnership, general, limited or with share capital is a juridical entity under the law of Porto Rico for the purpose of suing and being sued in the Insular courts. That, however, does not make such a partnership a corporation for purposes of Federal court jurisdiction. A Porto Rican partnership with share capital is more like a joint stock association than a corporation, but this court has held that a joint stock association is not a corporation for the purpose of conferring jurisdiction upon a Federal court (*Chapman* v. *Barney, supra*). Still less is a limited partnership a corporation, as this court has held (*Great Southern Fireproof Hotel Co.* v. *Jones, supra*). Porto Rico like the states of the United States has true corporations (Corporation Law of Porto Rico, Compilation of Revised Statutes and Codes of Porto Rico, p. 88).

We think that petitioner has shown no reason for the change by this court of its rule of decision laid down forty-

five years ago in *Chapman* v. *Barney, supra,* and uniformly followed.

Petitioner assumes that the case was removed from the Insular District Court to the District Court of the United States for Porto Rico upon the ground of diversity of citizenship. The record does not so show.

The petition in removal (R. 5) set out the citizenship and domicile of the respondents, then defendants, the fact that the amount in controversy exceeded the jurisdictional amount, the political nature of the People of Porto Rico, the citizenship and residence of the Treasurer of Porto Rico, and then stated that the suit was one in which the District Court of the United States for Porto Rico has original concurrent jurisdiction "in accordance with the United States statutes." The order of removal (R. 8) says that it is "in accordance with Section 28 of the Federal Judicial Code and the doctrine established in the cases, *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. Rep. 500; *Goico* v. *Russell & Co.,* 4 Fed. (2d) 7, and *South Porto Rico Sugar Co.* v. *Sepulveda,* 27 P. R. R. 310." The record shows no reason given by the Judge of the Federal Court for denying the motion to remand to the Insular District Court (R. 73).

The suit was removable as one of a civil nature where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, arising under the laws of the United States.

The original complaint shows (R. 76) that the people of Porto Rico "is a political entity invested with governmental powers, with capacity to sue, constituted by the act of the United States Congress approved the 2d of May, 1917, commonly called 'The Jones Law, or Organic Act of

Porto Rico'." Any suit brought by the People of Porto Rico is one which "arises under the Constitution or laws of the United States."

In addition, the suit was brought under the Act of Congress of April 23, 1928 (45 Statutes at Large 447), which required the collection of taxes, where the taxpayer prior thereto obtained an injunction which had been lost by reason of the act of March 4, 1927 (44 Statutes at Large 1421), by a suit at law instead of by attachment, embargo, distraint or any other form of summary administrative proceeding.

This Act of April 23, 1928, superseded and took the place of the methods otherwise available for the collection of taxes in Porto Rico where the one alleged to owe the taxes was one who had theretofore obtained an injunction which had been lost because of the Act of March 4, 1927, as interpreted by this court.

In the original complaint which was filed in the Insular Court on June 24, 1930, the following appears (R. 79):

> "V. The plaintiff alleges that subsequent to the year 1922 the Treasurer of Porto Rico has endeavored to collect from the defendant the corresponding taxes assessed accordant with the provisions of the said law No. 49 of 1921, and that the defendant has refused to pay them, notwithstanding repeated demands for payment; and that the defendant has repaired to the District Court of the United States for Porto Rico praying for and obtaining restrictive remedies which have prevented the plaintiff up to within a short time past from exercising its last resources to effect the collection of the said taxes and legal surcharges."

That allegation was included in the complaint simply and solely to bring the action within the scope of the Act of April 23, 1928, for otherwise it could not be brought.

A similar provision is found in the amended complaint (R. 5):

> "9. The plaintiff alleges that subsequent to the year 1922 the Treasurer of Porto Rico endeavored from time to time to collect from the defendant the corresponding taxes levied and assessed against lands of the defendant according to the provisions of said Act No. 49 of 1921 and that the defendant, though often requested, has failed and refused to pay said taxes or any part thereof, and has constantly obstructed the Treasurer of Porto Rico in the collection of said taxes by injunction suits in the District Court of the United States for Porto Rico and by other means."

The statement of facts in paragraph 24 (R. 67) is to the same effect, although more artistically worded.

In *Fajardo Sugar Company of Porto Rico* v. *Holcomb, Auditor*, 16 Fed. (2d) 92, at 96, the Circuit Court of Appeals after describing the structure of the Government of Porto Rico and referring to the Organic Act of Porto Rico, says:

> "* * * There is also a provision in Section 34 that:
>
> 'All laws enacted by the legislature of Porto Rico shall be reported to the Congress of the United States, * * * which hereby reserves the power and authority to annul the same.'
>
> If not thus annulled within reasonable time, there is a presumption that they are approved (citing cases).

> **The result is that all Porto Rican legislation now on the statute books is—in a very real sense, though indirectly—the output of our Federal Government. • • •**
>
> **• • • the Organic Act is nothing but Federal legislation, and Porto Rican legislation, approved expressly or impliedly by Congress, has exactly the same import."**

See also *Camunas* **v.** *Porto Rico Railway, Light & Power Co.*, **272 Fed. 924.**

It follows, therefore, that the case was removable either because of diversity of citizenship or because it was one arising under the laws of the United States.

If petitioner should succeed upon this jurisdictional ground alone and the case be remanded to the Insular courts of Porto Rico, the case would come up again to the Circuit Court of Appeals for the First Circuit, for that court has authority to review decisions of the Supreme Court of Porto Rico where the amount involved is Five thousand Dollars ($5,000) or more (28 U. S. C. A. §225(a), (d); 39 Statutes at Large 951, Sec. 43), and presumably would be decided upon the merits by the Circuit Court of Appeals in the same way.

It is for this reason undoubtedly that the petitioner on page 14 of its petition admits that the jurisdictional question presented by it may be of little or no importance in this particular case.

POINT II.

The Act of July 8, 1921, does not apply to the respondents.

The first section of the act in question here provides:

> "That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system."

There is no evidence in the record that the lands of the respondents which it is sought to tax "are supplied with water from the southern coast public irrigation system."

The Guayabal Dam impounds and stores part of the waters of the River Jacaguas which flows into the Caribbean Sea on the south coast of Porto Rico and the waters of the Toro Negro River which rises on the north side of the main water shed of Porto Rico (R. 30). This impounding and storage, the contracts provided, might interrupt and impair the source of supply of the waters of the Jacaguas River to which Fortuna Estates was entitled (R. 30).

The contract provided (R. 31):

> "The People of Porto Rico (notwithstanding the construction and operation of said Guayabal Dam), is ready to deliver *from the said Jacaguas River* to the said Fortuna Estates the amount of water to which the latter may be entitled under its said concessions, * * *"

The parties then agreed upon certain quantities of water which were "the fair equivalent in value of the water which the said Fortuna Estates takes under and pursuant to the concessions and water rights," and the People of Porto Rico agreed to "make delivery to the Fortuna Estates, * * * of the said amounts of water" (R. 31, 32).

The contract provided that the People of Porto Rico, when there was no storage water in the reservoir behind the Guayabal Dam, should deliver the quantities of water agreed to be delivered to Fortuna Estates "from the flow of the Jacaguas River exclusive of water added thereto from the Toro Negro River" (R. 35), and provided that the People of Porto Rico should have the right to divert from the reservoir behind the Guayabal Dam into the Juana Diaz Canal or any other canals of the irrigation system the amount of water flowing into the reservoir from the Toro Negro River or from any other sources than the Jacaguas River (R. 35).

We have quoted only from the Fortuna Estates contract because the other contract is the same except for names and amounts.

The scheme of the contracts is clear. The Government would impound all the waters to which respondents' predecessor in title and lessors were entitled. They would let this down so that the respondents could take it at respondents' intakes in amounts less than the concession amounts. If there was no Jacaguas River water behind the dam no water would be let down.

We submit that under the contracts the respondents were not supplied "with water from the southern coast public irrigation system."

The statement of facts is to the same effect (R. 65):

> "20. That the officials of the Government of Porto Rico charged with the compliance of the said contracts of August 26, 1914, have complied with the same in their entirety and the aforesaid properties designated hereinabove and in the amended complaint and answer as haciendas Fortuna, Cristina, Luciana and Serrano, Union and Placeres, have been supplied since the year 1915 and are now being supplied with water for the purpose of the irrigation of said lands from the Southern Coast Public Irrigation System pursuant to and under the terms of the said contracts of August 26, 1914, hereinabove referred to in paragraphs 10 and 18, but neither the defendants herein nor the said lands so hereinabove described have received during such time or any other time nor are they now receiving, nor have they been supplied, nor are they being supplied with any water for the irrigation of said lands or for other purposes from the said Southern Coast Public Irrigation System *except such waters as the said defendants* and the said lands were and are entitled to receive under and by virtue of the contracts of August 26, 1914, *hereinabove referred to.*" (Italics ours.)

We repeat that except for the admitted fact that the water of the Jacaguas River belonging to the respondents under the concessions is impounded behind the Guayabal Dam, there is no evidence in the record that the public irrigation system of Porto Rico is in any way used for the purpose of supplying the respondents with water.

POINT III.

Act No. 49 of 1921 impairs the obligation of the contracts of August 26, 1914, and is of no effect.

The Circuit Court of Appeals in *People of Porto Rico* v. *Russell & Company,* 268 Fed. 723, held that the rights of the respondents to water for the Haciendas Fortuna, Cristina, Luciana and Serrano, depend during its existence upon the contract of August 26, 1914, between Fortuna Estates and the People of Porto Rico (R. 28). As the water for Haciendas Union and Placeres is covered by the same form of contract (R. 44) it follows that the rights of the respondents as sub-lessees of Union and Placeres likewise depend for the purposes of this case upon the contract of August 26, 1914, between the owners of these properties and the People of Porto Rico.

At page 726 of its opinion in *People of Porto Rico* v. *Russell & Company, supra,* the court, after quoting Section 13 of the Act of August 8, 1913 (Laws of Porto Rico 1913, Extraordinary Session, p. 72) set forth above at page 8, said:

> "The power of the government officials to contract with the owners of water rights was, under this section of the statute, limited to giving in exchange for the old water rights water which would be a fair equivalent in value."

At page 729 the court said:

> "* * * we think it is apparent from a reading of the contract that their old concessions are suspended while the contract remains in force, and that, as it is still in force, their right to the water in question depends upon the contract."

In other words, while the contract exists, the Circuit Court of Appeals says respondents have no operable rights under their concessions. Whether or not the concessions could once have been taxed, certainly from the time of the decision of the Circuit Court of Appeals the concessions being suspended could not be taxed, yet they have been taxed for by the agreed statement of facts (Par. 21, R. 66) we find that the properties to which the concessions are appurtenant

> "are subject to all real property taxes levied by The People of Porto Rico for insular or municipal purposes, and all of such taxes levied from 1921 to date have been paid from year to year at the same rates paid by other properties, whether included in the Southern Coast Public Irrigation District, provided by the Irrigation Law, or not included therein, and whether the owners of the land have relinquished their concessions for irrigation waters or have not relinquished them."

The decision of the Circuit Court of Appeals was handed down in October, 1920, and in 1921, at the first session of the Porto Rican Legislature thereafter, Act No. 49 of 1921 was passed, the stated purpose of which is to compel respondents to pay a special tax for the water which they receive under the contract with the Government of Porto Rico from the Jacaguas River as an agreed equivalent in value of their rights under the concessions.

The Government could have condemned the water rights appurtenant to the properties in question (Laws of Porto Rico, Special Session 1908, Sec. 12, p. 52). Had it done this the owners would have been paid in cash, their lands would then have been included in the irrigation district and

would have borne part of the special assessment necessary to pay the cost of construction, operation and maintenance of the irrigation system which is levied by the Irrigation Law on all lands within the irrigation district. This the Government did not do, nor did it agree with the owners of the concessions for a voluntary relinquishment of the water rights for an agreed compensation, as it could have done (Laws of Porto Rico, 1908, Special Session, Sec. 12, p. 52; Sec. 15, p. 54; Laws of Porto Rico Extraordinary Session, 1913, Sec. 2, pp. 54, 56; Sec. 7, pp. 61, 63). If it had done this the lands would have been included in the irrigation district and the amount of the compensation agreed upon would have been credited upon the assessments made against those lands.

Defendants, however, as they had a perfect right to do under the law (Laws of Porto Rico, Extraordinary Session 1913, Sec. 13, p. 72), elected to retain their concession rights and to contract for and receive "an amount of water which is the reasonable equivalent in value of the said water right or concession", in which case the land to which the water right was appurtenant could not be included in the irrigation district and was not within the scope of the law and could not be made liable for any of the expense of constructing or operating the irrigation system because the law provided expressly that the total amount necessary to pay for the construction, operation and maintenance of the irrigation system should be "levied upon the lands at the time included within the" temporary or permanent irrigation district (Laws of Porto Rico, Extraordinary Session 1913, Sec. 6, p. 59, Sec. 11, p. 68).

The People of Porto Rico agreed to deliver the reasonable equivalent in value of the concession water and, in the

words of the Circuit Court of Appeals in the instant case (R. 88):

> "* * * the consideration therefor was the right acquired by the People of Porto Rico to carry out its irrigation scheme and operate its dam and hold back and store therein the waters of the Jacaguas River, which otherwise it could not do, for the Irrigation Act of 1908, as amended in 1911 and 1913, did not make any of the lands here in question a part of the irrigation district thereby constituted."

The Government of Porto Rico attempted to deprive the respondents of part of the water it had agreed to deliver to respondents' predecessor in title, Fortuna Estates, but by the decision of the Circuit Court of Appeals in *People of Porto Rico* v. *Russell & Co.*, 268 Fed. 723, the right of respondents to this additional water was sustained.

The attempt to deprive the respondents of the water to which they were entitled under the contract by administrative action having failed, the People of Porto Rico decided to rob them of the fruits of their contract by legislative fiat and passed Act No. 49 of 1921.

Section 2 of the Jones Act (39 Statutes at Large 951) provides:

> "that no law impairing the obligation of contracts shall be enacted."

If the concessions of respondents' predecessor in title and lessors had been condemned or voluntarily relinquished, they would have been paid in cash or by credit the value of the concessions and thereafter obviously they would benefit from the irrigation system and should pay for it. Under no circumstances would they have had

imposed upon them a burden greater than the benefit received, for the Irrigation Law was a special assessment law and expressly provided that only such lands should be included in the temporary irrigation district and in the permanent irrigation district as would receive by being made a part of the district "a benefit greater in amount than the total cost or burden imposed by law upon the said lands, as hereinafter provided" (Laws of Porto Rico, Extraordinary Session 1913, Sec. 2, p. 55; Sec. 7, p. 62).

As the Irrigation Law provided for the payment of the entire cost of the construction, operation and maintenance of the irrigation system by the lands in the temporary and permanent irrigation districts, it is clear that the governmental scheme did not contemplate that the owners of non-relinquished concessions who contracted for the delivery to them of an amount of water which was the fair equivalent in value of their concession water, should pay any part of the cost either of construction, operation or maintenance of the irrigation system. The contracts in question here were based upon that admitted premise.

In the court below it was urged that the possibility of a tax upon the owners of land who did not relinquish their concessions but made contracts for the delivery of a fair water equivalent such as that sought to be assessed by the Act of 1921 was in contemplation of the parties when the contracts were made, and on pages 47 and 48 of petitioner's brief in this court it is said:

> "But the Government regards the question whether the lands in question are specially benefited by the development and maintenance of the irrigation system, otherwise than by the mere delivery of the amount of water stipulated in the contracts as one for determination by the insular Legislature in

> its discretion, and one which that Legislature has in effect determined by the Act of 1921."

It necessarily follows from this statement of the position of the Government that year by year so long as the irrigation system exists the Insular Legislature may have a new thought upon the subject and may determine from year to year that in its opinion the lands in question are benefited more and more and should pay other or additional taxes.

Petitioner in its brief says (p. 39) that it

> "is more than willing that its actions under review in this case, as well as in all other connections, shall be judged according to the standard suggested in the opinion of this court in *Woodruff* v. *Trapnall,* 10 Howard 190, 207."

This court there said:

> "A State can no more impair, by legislation, the obligation of its own contracts, than it can impair the obligations of the contracts of individuals. We shall naturally look to the action of a sovereign State to be characterized by a more scrupulous regard to justice, and a higher morality, than belong to the ordinary transactions of individuals."

The only way in which the actions of the Government of Porto Rico in connection with the subject-matter of this case can be squared with its protestation quoted above from its petition is upon the theory that "justice" and "morality" can no more be translated into Spanish than petitioner can translate the word "*sociedad*" into English.

The respondents' predecessor in title and their lessors did not receive a penny from the Government. They merely

contracted for a fair equivalent of the water which they were entitled to receive and which the Government of Porto Rico could not prevent them from receiving. The Irrigation Law expressly provided that the lands in the irrigation district should not be burdened more than they were benefited and that the lands in the irrigation district should pay the total cost of the construction, maintenance and operation of the system.

The Irrigation Law, without expressly saying so, can only be read as a legislative statement that non-relinquished concession holders would receive no benefit from it for their lands could not be included in the irrigation district, and land could be included in the irrigation district only if it was benefited. The Act of 1921 which is in question here, however, attempts to make the respondents bear a share not only of the cost of maintaining the irrigation system but also the cost of constructing it, and not only the cost of maintaining and building the Guayabal irrigation project on the Jacaguas River, but also the cost of maintaining and constructing all of the irrigation and hydro-electric projects on the southern coast of the Island of Porto Rico, from none of which do they receive any benefit.

The law puts the respondents on a par with land-owners who receive waters from the irrigation service without ever having owned concessions and puts them at a disadvantage compared with those who had water rights which were condemned for cash or were relinquished for a price credited upon the annual assessment as it becomes due.

A clearer case of impairing the obligation of a contract could not be found. The Government says: "You have certain rights of which you cannot be deprived against your will except by condemnation, in which case you must be

paid. If you will, we will value your concessions and pay you the agreed value. It is our plan, as set forth in the law, to have those who have no concessions whose concessions have been condemned or relinquished, pay the cost of the construction and operation of the irrigation system. This cost will be no greater to them than the benefits they derive. If you do not wish to give up your concessions, we will not condemn them but we will deliver to you from the water which you own and which we wish to hold up an amount which is the fair equivalent in value, considering the various elements involved, of the water which you are now taking."

The concessionaire, relying upon the good faith of the Government, agrees to accept this fair equivalent. A formal contract is drawn. Almost immediately the Government attempts to take from the concessionaire and sell part of the water which it has agreed to deliver. This the concessionaire fights and is successful in the legal battle. In the legal battle the court held that under the contract the concessionaire had temporarily relinquished his concessions, so the Government said: "Because we have the power to tax, and because the power to tax is the power to destroy, we will make you pay by way of a tax for the water which belongs to you and which but for the contract we could not prevent you from taking."

Against this record of action the Government protests its belief in the application to it of a more scrupulous regard for justice and a higher morality than belongs to the ordinary transactions of individuals.

Will the courts allow any government so to act?

This court answered in the negative in *Woodruff* v. *Trapnall, supra; Fletcher* v. *Peck*, 6 Cranch 87; *Green* v. *Biddle*,

8 Wheaton 1, 92; *Hall* v. *Wisconsin*, 103 U. S. 5, and *Antoni* v. *Greenhow*, 107 U. S. 769, 795.

That this conception of sovereign morality enunciated in the early days of the Republic still exists is the view of the Circuit Court of Appeals, as shown by its opinion below (R. 89).

No Legislature can justify the impairment of the obligation of a contract by calling it an exercise of its power to tax. *Cooley* says:

> "The Federal Constitution provides that no state shall pass any law impairing the obligation of contracts. This restricts the state from passing laws relating to taxes which will violate existing contracts" (Cooley Taxation 4th Edition, Sec. 136, p. 318).

In *State Tax on Foreign-held Bonds*, 15 Wallace 300, at page 320, this court cogently said:

> "A law which alters the terms of a contract by imposing new conditions * * * is a law which impairs its obligation, for, as stated on another occasion, such a law relieves the parties from the moral duty of performing the original stipulations of the contracts and it prevents their legal enforcement."

The City of Charleston passed an ordinance assessing a general tax on city stock, and by the ordinance the city was allowed to retain as a tax part of the interest due on the stock. The State court held that the ordinance did not impair the obligation of the contract between the city and the holder of the stock, as the possibility of such a tax was in the contemplation of the parties when the plaintiff bought his stock.

In *Murray* v. *Charleston*, 96 U. S. 432, the Supreme Court of the United States held that the ordinance was void, as it impaired the obligation of the contract between the parties. The court said at page 444:

> "We do not question the existence of a State power to levy taxes * * * nor the subordination of contracts to it, so far as it is unrestrained by constitutional limitation. But the power is not without limits and one of its limitations is found in the clause of the Federal Constitution that no State shall pass a law impairing the obligation of contracts. * * * The constitutional provision against impairing contract obligations is a limitation upon the taxing power, as well as upon all legislation, whatever form it may assume."

Continuing, the court said at page 448:

> "There is no more important provision in the Federal Constitution than the one which prohibits States from passing laws impairing the obligation of contracts, and it is one of the highest duties of this court to take care the prohibition shall neither be evaded nor frittered away. Complete effect must be given to it in all its spirit. The inviolability of contracts, and the duty of performing them, as made, are foundations of well-ordered society, and to prevent the removal or disturbance of these foundations was one of the great objects for which the Constitution was framed."

Certainly the People of Porto Rico could not by the contracts of August 26, 1914, agree for a very valuable consideration received—the right to operate the Jacaguas River irrigation system—to give as a fair exchange a certain commodity, water, and at the same time mentally reserve the right to charge for that water by way of taxes.

Gulf etc. R. R. Co. v. *Adams,* 90 Mississippi 559, deals with a State statute which levied a privilege tax on railroads, which under their charters were exempt from State supervision as to rates within certain maximum and minimum limits. The Mississippi court held the statute unconstitutional as impairing the obligation of the charter contract. It said at page 605:

> "There are several things to be noted which we think demonstrate the unconstitutionality of this act in this respect beyond controversy. First. This additional privilege tax is an extraordinary tax, one over and beyond the usual privilege tax required to be paid by other railroads doing similar business in this state. Second. It is clear that the imposition of this privilege tax is an exaction made solely because of the enjoyment by the appellant of this contract privilege in its charter. It was not for the legislature to extend by the charter contract the privilege of regulating its rates within certain limits to this appellant with one hand, and then with the other, after the road had been built, practically take away the privilege by the imposition of its privilege tax. * * * Fourth. This $10 per mile additional privilege tax is a burden imposed on the corporation as a condition to its further exercise of the corporate right conferred by its charter. * * * we are constrained to declare that this legislation * * * violates both the contract clause of the constitution of the United States and the fourteenth amendment thereof."

There is striking similarity between this case and the one at bar. The tax provided by Act No. 49 of 1921 is an extraordinary tax imposed on account of an alleged benefit conferred by the state and not imposed on other landowners in Porto Rico. The tax is imposed solely because of the

enjoyment by the respondents of rights under contracts with The People of Porto Rico proceeding from rights anteriorly held which came from the King of Spain. In the case at bar the Legislature is attempting to take away with one hand what it has contracted to give with the other.

Petitioner contends that the Act of 1921 constitutes a declaration by the Legislature that the lands thereby taxed are specially benefited by the operation and maintenance of the irrigation system, at least to the extent of the taxes levied thereon by that act, and regards this determination by the Legislature as one which it was within its power to make and one which the courts will not disturb, at least in the absence of some showing that it is arbitrary and oppressive.

For this statement of principle petitioner relies on the case of *Spencer* v. *Merchant,* 125 U. S. 345. The case is not apposite for two reasons. First. The original special assessment law therein involved provided for fixing a certain district as taxable for the proposed betterment. Beterments were allocated to the land in the assessment area. Part of the assessments was paid. Part was not paid, because the proceeding had been declared invalid by the courts as to those who had not paid. Thereafter the Legislature directed the levying of an assessment *on the lands originally included in the assessment area which had not paid the tax, in the amount of the assessment first fixed against them.* The total of the two assessments was the total cost of the improvement. That is not the case here, for the total cost of the improvement and of its maintenance was at the time when the contract was made required to be paid by those in the irrigation district and is now required to be paid by them. The second reason why the

case is not in point is that the legislative act assessing the tax determined, as the opinion of this court shows, "absolutely and conclusively the amount of tax to be raised." In the case at bar a Legislature has not determined the amount of the tax to be raised, which is a legislative function and one which it cannot delegate.

The concession owners who contracted with the Government contracted in view of the provisions of the Irrigation Law, which provided for the payment by the lands in the irrigation district of the total cost of construction and maintenance of the irrigation system. To attempt now to collect from these contracting concession owners any part of the money necessary either for the construction or the maintenance of the irrigation system is beyond question an impairment of the rights which they have under their contracts and therefore invalid. Such was a holding both of the District Court and of the Circuit Court of Appeals.

POINT IV.

The law in question violates the requirements of the Organic Act that the rule of taxation in Porto Rico shall be uniform.

Section 2 of the Organic Act (39 Statutes at Large 951) constitutes the Porto Rico Bill of Rights and included in it is the provision "that the rule of taxation in Porto Rico shall be uniform."

Section 11 of the Irrigation Law of 1913 (Laws of Porto Rico, Extraordinary Session 1913, p. 67) provides for the tax which is to be assessed and levied upon any

"given tract of land included in the permanent irrigation district."

The Irrigation Law provided the manner in which the temporary and permanent irrigation districts should be formed (Sec. 2, p. 54; Sec. 7, p. 61), and only those lands included in the temporary or permanent irrigation districts and only those lands receiving benefit from the irrigation work were taxed. No lands were included in either the temporary or permanent irrigation district unless they would "receive by forming a part of the (temporary or permanent) irrigation district a benefit greater in amount than the total cost or burden imposed by law upon the said lands, as hereinafter provided" (Sec. 2, p. 54; Sec. 7, p. 61).

No tax is provided for in connection with the construction or operation of the irrigation works except upon land that is included in the irrigation district and is benefited more than it is burdened with taxes.

As the permanent irrigation district has been formed and as it does not, because it cannot by reason of the provisions of the Irrigation Law, include any of the lands in question here, we shall disregard the temporary irrigation district and confine ourselves to the permanent district.

The method of levying and assessing the taxes to be paid by the lands included in the permanent irrigation district is as follows (Sec. 11, p. 67):

The Treasurer calculates the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year and adds thereto the amount due upon credits for the ensuing year on account of water rights or concessions which have been valued or relinquished. He then adds the amount estimated by the Commissioner of the Interior as the probable cost of operat-

ing and maintaining the irrigation system for the ensuing year. There is then either added to or subtracted from this total the estimated amount of any deficit or surplus from operations for the current fiscal year and from this total there is then subtracted the amount estimated by the Commissioner of the Interior as receipts for the ensuing year from the sale of any water power developed in connection with the irrigation system and the amount estimated by the Commissioner of the Interior as receipts for the ensuing year from any other sources except from the issues of bonds and special assessments upon the land in the permanent irrigation district. To the total so determined the Treasurer adds 2% as a margin of safety and the amount thus determined constitutes the total sum to be assessed for the ensuing fiscal year *"and the same shall be levied upon the lands at the time included in the permanent irrigation district."* It is also provided that before the certification by the Commissioner of the Interior of the amount estimated by him as receipts from water power, the Commissioner may "if in his judgment it is advisable deduct from the amount thus estimated by him a sum not to exceed 25% of the said amount for the development and extension of the said water power." The section also contains a provision limiting under certain circumstances the amount of the assessment per acre that can be levied in any year.

It will thus be seen that the total cost of building and operating the irrigation system is made a charge upon the land benefited thereby and included in the permanent irrigation district.

From the time of the execution of the contracts of August 26, 1914, down to the passage of Act No. 49 of 1921,

on July 8, 1921, or for a period of seven years, no attempt was made by the Government of Porto Rico to collect taxes from the respondents upon the lands using the water covered by these contracts except the real property taxes levied on all property in Porto Rico for insular or municipal purposes which are described in paragraph 21 of the Statement of Facts (R. 66). This was for two reasons: First, because the lands were not included in the permanent irrigation district, and second, because the water the lands were receiving was being delivered to them in exchange for water which they owned and had theretofore enjoyed and as a fair equivalent in value thereof. As this water delivered under the contracts of August 26, 1914, was, by the words of the Irrigation Law and by the words of the contracts, only the fair equivalent in value of the water theretofore used under the concessions, the respondents could not have been required to pay a special assessment as such special assessments are levied only for benefits received and can only be supported as such.

Section 1 of Act No. 49 of 1921 provides:

> "that a *special tax* is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, *but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system.*" (Italics ours.)

Upon first reading of this section one would think that the Public Irrigation Law was a void law, because only part

and not all of the land receiving water from the irrigation system was taxed. If read, however, in connection with the Irrigation Law and particularly in connection with Section 13 providing for the delivery of a fair equivalent in value for unrelinquished concession water, it indicates a clear intent to make an exaction solely because of the enjoyment by the respondents of their contract rights, and in effect to levy a special assessment for the cost of construction and the up-keep of the irrigation system upon certain lands deriving no benefit therefrom.

It is apparent from the law that it is not a general property tax upon all land in Porto Rico, because it is expressly confined to lands "which for irrigation purposes are supplied with water from the southern coast public irrigation system," and as we show below, unless the tax is a special assessment for benefits received it must be levied generally upon all land in Porto Rico. If it is a special assessment it can be levied only upon lands which derive benefit from the public improvement.

By Section 2 of the Act of 1921 the Treasurer is first authorized to fix the total number of acres receiving water from the irrigation system, which shall include (1) tracts of land subject to taxation under the Irrigation Law for the purpose of reimbursing the cost of the irrigation work, that is, lands receiving benefit from the improvement and which should pay the cost thereof; (2) tracts of land whose right to the use of water the Irrigation Commission has acknowledged, or whose right has been acknowledged by the court in cases of appeal as rights acquired under prior concessions; (3) lands irrigated with water delivered in accordance with concessions which have not been relinquished or assigned and which water is delivered in whole or in

part at canals of the Irrigation Service, the acreage of which tracts are determined by dividing the number of acre feet of water received by these tracts by four; and (4) tracts of land irrigated with water delivered in accordance with concessions not relinquished or assigned, which water is taken in the river at the intake specified in the concessions, the acreage of which tracts is obtained by dividing the number of acre feet delivered by five.

The Treasurer then takes the amount estimated or certified to as estimated by the Commissioner of the Interior as necessary for defraying the cost of operation and maintenance of the Irrigation Service during the following fiscal year, adds thereto or subtracts therefrom any deficit or surplus for operating and maintenance expenses during the preceding fiscal year and divides the amount so determined by the total number of acres computed as provided, and the quotient constitutes the tax per acre which "shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system."

It is necessary here to state in some fair detail the provisions of the Porto Rico Irrigation Law which affect this case.

What is called the Public Irrigation Law consists of the original act approved September 18, 1908 (Laws of Porto Rico, Special Session 1908, p. 44 ff.), as amended by Act No. 74 of 1911, approved March 9, 1911 (Laws of Porto Rico, 1911, p. 237 ff.), and further and very largely amended and supplemented by Act No. 128, approved August 8, 1913 (Laws of Porto Rico, Extraordinary Session, 1913, p. 54 ff.). The law has also been amended or supplemented by acts

passed in 1917 (Laws of Porto Rico, 1917, Vol. 2, p. 256), in 1921 (Laws of Porto Rico, 1921, p. 876), in 1925 (Laws of Porto Rico, 1925, p. 1024), in 1927 (Laws of Porto Rico, 1927, p. 512), and in 1929 (Laws of Porto Rico, 1929, p. 212).

Properly conceived as a law authorizing an improvement, the cost of which should be borne by those receiving the benefit, the law has been allowed to become a toadstool burdening lands in the irrigation district with the cost of all sorts of additions, improvements and repairs not properly chargeable to the lands included in the district.

The original Act of 1908 provides in Section 1 for an appropriation for the construction of an irrigation system for the district situated approximately between the River Patillas on the east and the River Portugues on the west (p. 46).

The court may take judicial notice of the fact that in this district there have been constructed four irrigation dams and reservoirs, Guayabal, Coamo, Patillas and Carite. This is shown on official government maps.

Section 3 of the Act (p. 46) is as follows:

> "The proceeds of the sale of the bonds and all moneys accruing by reason of assessments of taxes and sales of water and power within the irrigation district shall, subject to the provisions of Section 29 of this act, be deposited in the Treasury of Porto Rico in a trust fund to be known as the 'Irrigation Fund,' which fund may be subdivided for statistical purposes as the Auditor may prescribe. All expenditures for the construction and maintenance of the irrigation system, and all payments of interest and principal of any debt incurred for the construction of the said system, shall be payable from the said trust

fund upon warrant of the Auditor, countersigned by the Governor."

Section 12 of the Act (page 52) authorizes the Commissioner of the Interior to initiate suits for the condemnation of any land or right embraced within the irrigation district.

Section 21 authorizes the Irrigation Commission which is set up by the act to fix the geographical boundaries of the irrigation district and to determine what irrigable land shall be included therein. The Section says that:

> "The Commission shall examine critically each tract or local sub-division of land which might be included in the district, with a view to determining what lands are of such a location and such a nature that they can be profitably and successfully irrigated under the said irrigation system. They shall include in the said district only such lands as in the judgment of the Commission, are so located and of such a nature *that they will receive by the placing of the water thereon a greater benefit than the total cost or burden imposed by law upon the lands as herein provided.*" (Italics ours.)

Section 26 (page 62) allowed an appeal to the courts from the decision of the Irrigation Commission as to what lands should be included in the irrigation district and the value of relinquished water rights and the amount of corresponding deductions from the taxes assessed upon the lands by reason thereof.

Section 27 provided that all lands in the irrigation district should be assessed a uniform amount per acre, and Section 28 (page 64) set up the method of determining the amount that would be assessed, which amount would in due course pay the principal of the irrigation bonds, pay the

interest due yearly, and pay the cost of operating the system.

Section 29 (page 68) provided that if water power should be developed in connection with the construction of the irrigation system the Executive Council was authorized to arrange for its utilization and exploitation as an integral part of the said irrigation system, and also provided that:

> "All profits accruing from said power shall be covered into the Irrigation Fund and applied to the decrease of annual assessments until all indebtedness incurred on behalf of the irrigation system has been fully paid, but the right and title to such water power shall remain in the Insular Government, and the income from said work, after all indebtedness has been paid, shall be covered into the Insular Treasury as Insular Revenues until further provision shall have been made by the Legislative Assembly."

Section 31 (page 70) provides that:

> "In the event that there remains in the Irrigation Fund any of the profits of the sale of the bonds for said irrigation system over and above the amount required for the completion of the construction thereof, the amount of said surplus and the whole of it shall be expended upon and devoted to the collection, conservation and distribution of additional waters for irrigation, manufacturing and municipal purposes, and the water so collected, conserved and distributed shall be sold for the benefit of the Irrigation District."

It will thus be seen that the original law fulfilled all the requirements of a special improvement law. No one could be burdened more than he was benefited. Those benefited

were to pay the cost of the project. None of the expenses to be incurred was to be met by a general levy.

The original plan was further carried out by the provisions of Section 16 of the Amendatory Act of March 19, 1911 (Laws of Porto Rico, 1911, p. 242), where after providing for an additional $1,000,000 of bonds it was enacted:

> "That to the payment of the interest and principal of the said bonds shall be devoted the revenues derived from special assessments levied for the respective fiscal years during the life of said bonds upon the irrigable lands included in the irrigation district, as provided in the Public Irrigation Law, and *the said tax or special assessment shall continue to be levied and collected until the principal and interest of the bonds provided for in this act shall have been paid.*" (Italics ours.)

The amendatory Act of 1913 (Laws of Porto Rico, Extraordinary Session, 1913, p. 54 ff.) largely expands the original Act of 1908. This act repeats in Section 2 the provision in the original act that only such lands shall be included in the temporary irrigation district as will receive "a benefit greater than the total cost or burden imposed by law upon the said lands, as hereinafter provided," and in Section 7 (page 62) it makes the same provision for lands in the permanent irrigation district.

It is provided in Section 6 (page 58) for the temporary district, and in Section 11 (page 67) for the permanent district, how the assessments to be levied on the lands in the respective districts shall be determined. Both during the existence of the temporary district and during the existence of the permanent district it is provided that there shall be assessed an amount sufficient to pay the principal

and interest on the bonds and the cost of the yearly operation of the system, and, in addition, it is provided that the assessments shall not exceed certain amounts per year per acre. Provision is made for appeal to the courts from the decisions of the Irrigation Commission as to what lands should be included in the permanent irrigation district (Sec. 10, p. 66).

Section 15 (page 73) expressly provides that each tract of land shall be liable only for its proportionate share of the taxes determined as described above.

Additional bonds are authorized by Section 19 (page 75), and Section 26 (page 78) provides

> "That to the payment of the interest and principal of the said bonds shall be devoted the revenues derived from special assessments levied upon the irrigable lands included in the irrigation district, as provided in the Public Irrigation Law, as amended, and as hereinbefore provided."

Section 31 (page 79) provides

> "If there shall be in the Irrigation Fund an insufficient amount to pay for principal, interest or other charges payable out of said Irrigation Fund, or if the said Irrigation Fund shall at any time become temporarily exhausted, then the Treasurer of Porto Rico may, in anticipation of the collection of assessments from either the temporary or permanent irrigation district, or in anticipation of the sale of bonds provided for herein, pay such charges out of any funds in the Treasury not otherwise appropriated, charging the same to the Irrigation Fund, and repaying the same out of the Fund when there are sufficient funds therefor, together with interest at four per centum per annum."

Section 32 of the 1913 Act (page 80) amends Section 31 of the Act of 1908 so as to read as follows:

> "Section 31.—In the event that there remains in the Irrigation Fund any of the proceeds of the sale of the bonds for the irrigation system over and above the amount required for the completion of the construction thereof, and for such other purposes for which bonds may be issued hereunder or under the prior Acts authorizing the issue of bonds on account of the irrigation system, such surplus proceeds shall be used for the payment of the principal falling due upon outstanding irrigation bonds at such time as the Executive Council shall determine, or in the event that all such bonds shall have been retired, then for such other purposes connected with the irrigation system as the Executive Council may determine."

This act again complied with the requirements of an act providing for a special improvement to be paid for by means of a special assessment upon those benefited. No one was included in the irrigation district and therefore taxable unless the Irrigation Commission had determined that his land received a greater benefit than the burden imposed upon it, and this decision of the Irrigation Commission could be reviewed by the courts. The amount of the cost of the improvement was to be levied upon those who benefited by it and only up to the amount of the benefit. All assessments paid by those in the irrigation district were to be used for the payment of the cost of the improvement. The 1911 Act provided that when this cost was paid the assessment should cease.

The court will remember that the original act provided in Section 29 that profits accruing from the sale of water

power should be used for the decrease of the annual assessments until all indebtedness on account of the irrigation system had been paid, and that thereafter such income should be covered into the Insular Treasury as Insular Revenues. This was a questionable excrescence on an otherwise carefully prepared law, and it had its baleful consequences.

By Act No. 23 of 1917 (Laws of Porto Rico, 1917, Vol. 2, p. 256) the Legislature stated in the preamble that a large amount of water ran to waste over the spillway of the Patillas Dam which could be stored by raising the height of the spillway and the ends of the dam, and also that the demand for electric power generated by the Carite hydro-electric power plant was greater than could be supplied by the existing installation, and it therefore enacted that the spillway of the Patillas Reservoir and the ends of the Patillas Dam be raised and that an auxiliary electric plant be constructed to insure the continuous delivery of power in the event that it became necessary to shut down the Carite hydro-electric plant for repairs (Sec. 1, p. 258).

To provide the necessary funds of $100,000 for the improvements at the Patillas Reservoir and $100,000 for the auxiliary electric plant at Patillas, $200,000 in bonds was authorized to be issued (p. 258).

Section 5 of the act provides (page 260):

> "That for the payment of the interest on the said bonds, as it falls due, and the payment of the principal, the good faith of The People of Porto Rico is hereby irrevocably pledged, and to the payment of the said interest and principal of the said bonds *there shall be devoted the revenues derived from special assessments levied upon the irrigable lands included in the irrigation district, as provided in the*

Public Irrigation Law and acts amendatory thereto, for the payment of principal and interest of bonds already issued for the construction of the said irrigation system." (Italics ours.)

Section 8 (page 262) provided

"That the works, improvements and extensions of certain parts of the irrigation system, authorized to be constructed, maintained and operated by the Public Irrigation Law, and Acts amendatory thereto, herein authorized to be constructed or carried out, are hereby declared to be works of public utility and to form and constitute an integral part of the said irrigation system as thus authorized, and subject to the same terms, conditions and limitations as to use, ownership and other lawful requirements, as though they had been originally authorized by and embodied in the said Public Irrigation Law, and Acts amendatory thereto, and all the profits accruing from the sale of the additional power to be developed by the auxiliary electric plant herein authorized to be built, shall be covered into the 'irrigation fund, trust fund', and applied to the decrease of the annual assessments to be made on the land included within the irrigation district, until all indebtedness incurred by the People of Porto Rico for purposes of the irrigation system, shall be fully satisfied; *Provided, however,* that the right and title to such additional water power and the ownership of the auxiliary electric plant shall remain in The People of Porto Rico, and the income from said auxiliary electric plant, after all indebtedness has been paid, shall be covered into the Insular Treasury as insular revenues, in accordance with the provisions of section twenty-nine of the Act of the Legislative Assembly of Porto Rico entitled 'An Act to provide for the construction of an irrigation system, and to provide revenues therefor;

> for the temporary appropriation of two hundred thousand dollars to begin such work, and for other purposes', approved the eighteenth day of September, nineteen hundred and eight."

The phrase "irrigation fund, trust fund", appears in this law for the first time. It is another way of describing the "trust fund to be known as the 'Irrigation Fund'" which is set up in Section 3 of the 1908 Act.

This 1917 Act imposed an additional cost upon the lands in the irrigation district for the extension of the Patillas Dam and Reservoir, without regard to whether this cost added to the cost of the irrigation system placed a burden upon the irrigation district greater than the benefit. That part of the act is questionable. Certainly that part of the act which provides for the construction of an electric generating plant, title to which was to be in the People of Porto Rico, but the expense of which was to be paid by the owners of the land in the irrigation district, was bad. The expense of this power plant should have been borne by the taxpayers of Porto Rico as a whole.

But the habit of loading upon the irrigation district expenditures made for the general benefit of Porto Rico had become fixed and so we find the Legislature in 1921 by Joint Resolution No. 47, approved July 23, 1921 (Laws of Porto Rico, 1921, p. 876), stating that the main distributing canals of the southern coast irrigation system needed repair, and stating that the sum of $100,000 provided for through the issue of bonds by the 1917 Act was insufficient to cover the cost of the auxiliary electric plant at Patillas, and finding also that it was considered advisable to provide a third installation for generating electric power, and therefore enacting that $150,000 should be advanced by the Insular

treasury to cover the expense of reconstructing main distributing canals of the irrigation system, and $100,000 for further expenditure upon the auxiliary electric plant at Patillas. This money was to be repaid by the irrigation system at the rate of $50,000 per year, $35,000 from the proceeds of the income from the sale of electric power produced by the Carite hydro-electric system, and the balance "from regular funds annually made available for the construction and operation of the irrigation system" (Sec. 3, p. 878).

Section 4 provided that in case the Treasury could not make such advance, bonds in the amount of $250,000 should be issued, and Section 7 (page 882) provides that:

> "for the payment of the interest on the said bonds, as it falls due, and the payment of the principal, the good faith of The People of Porto Rico is hereby irrevocably pledged, and the payment of the said interest and principal of the said bonds there shall be devoted the revenues derived from special assessments levied upon the irrigable lands included in the irrigation district, as provided in the Public Irrigation Law and acts amendatory thereto, for the payment of principal and interest of bonds already issued for the construction of the said irrigation system."

The expenses of issuing and selling these bonds were by Section 9 appropriated out of the unexpended balance of the "irrigation fund, trust fund." A similar appropriation for expenses of the sale of bonds had been contained in the 1917 Act.

Section 10 provided that the profits from the sale of power should be covered into the "irrigation fund, trust fund", and applied to the decrease of the annual assessments to be made on the land included within the irrigation

district until all indebtedness incurred for purposes of the irrigation system should be fully satisfied, but expressly provided that the title to the additional water power and the ownership of the electric plant should be in The People of Porto Rico and that the income from the electric plant after the indebtedness of the irrigation system had been paid, should be covered into the Insular Treasury as insular revenue. This law is subject to the same comment as was made in connection with the 1917 law.

By Joint Resolution No. 18, approved May 15, 1925 (Laws of Porto Rico, 1925, p. 1024) the Legislature found that the drainage course into which the waters overflow from the spillway at Patillas had sustained damage by reason of the overflows caused by the extraordinary floods of 1924, and that this damage was of such an extent as to require the immediate construction of works to protect the base on which the spillway rests. Bonds were, therefore, authorized to be issued in the amount of $125,000 to construct works to protect the spillway. Section 4 of the Act (page 1026) provides that to the payment of the interest and principal of these bonds:

> "there shall be devoted the revenues derived from the sale of electric power and from other incidental receipts of the system, and those derived from the special assessment levied upon the irrigable lands included in the irrigation district, as provided by the Public Irrigation Law and laws amendatory thereof, for the payment of the principal and interest of bonds heretofore issued for the construction of the said irrigation system."

By Section 6 (page 1028) the cost of issuing and selling the bonds was ordered paid out of the "irrigation fund, trust fund."

It will be noted that the moneys provided to be spent by the 1917, 1921 and 1925 acts are to be repaid by assessments against the owners of the lands included in the permanent irrigation district without regard to whether the benefit received is greater than the burden imposed and without allowing them in any way to be heard in opposition.

Emboldened by their success in charging against the owners of land in the irrigation district $250,000 in 1917, $250,000 in 1921, and $125,000 in 1925, the Legislature by Act No. 21, approved June 6, 1927 (Laws of Porto Rico, 1927, p. 512), authorized the issuance of $500,000 in bonds for the construction of work necessary to develop and use the water of the Toro Negro River for the purpose of developing water power and for the irrigation of lands included in the Public Irrigation System. Of this amount $100,000 was to be used as an advance in the construction of a third hydro-electric plant, such sum so advanced to be reimbursed as needed for the development of the work on the Toro Negro River.

By Section 4 of the Act (page 516) the good faith of The People of Porto Rico was pledged to the payment of the interest and principal on the bonds:

> "and there shall be applied to the payment of the aforesaid interest and of the principal of the aforesaid bonds all income from the sale of the electric power and from other sources incidental to the system and such as may be derived from the special assessments that may be made on the irrigable lands included in the Irrigation District, as provided by the Public Irrigation Law and by the laws amendatory thereof, for the payment of the principal and interest of bonds heretofore issued for the construction of the said irrigation system."

Section 7 of the Act (page 518) provided that moneys received for sales of water power to be developed from the works, the construction of which was authorized by the act:

> "shall be covered into the Irrigation Trust Fund and shall be applied to reducing the annual assessments to be made on the lands included within the Irrigation District, until all obligations contracted by The People of Porto Rico for purposes of the irrigation system shall have been fully paid."

The same Section provided that the additional water power and the ownership of the electric plants constructed under the Act should belong to Porto Rico and the revenue therefrom, after the obligations of the Irrigation system should have been paid, should be covered into the Insular Treasury as insular receipts.

Here again the Legislature provided no opportunity for the land owners in the irrigation district who are forced to bear this expense to be heard on the question whether the benefit to be derived therefrom was greater than the burden.

Again, in 1929 by Act No. 47, approved May 1, 1929 (Laws of 1929, p. 250), the further issue of $100,000 in bonds was authorized for the repair and reconstruction of the works of the southern coast irrigation system which were destroyed by the cyclone of September 13, 1928. Again the interest and principal on these bonds was provided to be paid for from the receipts of electric power and from the special assessments made on the lands included in the irrigation district (Section 5, p. 252).

Again, also, the land owners in the irrigation district who are taxed to pay the principal and interest of this additional expenditure were given no opportunity to be

heard upon the question whether this burden was equal to or in excess of the benefit received.

These acts from 1917 to 1929 imposed upon the owners of lands included in the permanent irrigation district a capital expense of $1,225,000, and interest thereon over a long period of years. Part of this money was used on the irrigation system. Part was used for hydro-electric plants making use of the water of the irrigation system, which hydro-electric plants and the power developed by them were specifically declared to be and to remain the property of the People of Porto Rico.

It is apparent from reading Section 11 of the 1913 Act (Laws of Porto Rico, Extraordinary Session, 1913, p. 67) that the owners of land within the permanent irrigation district are taxed by way of a special assessment in an amount sufficient to pay the total cost of constructing and operating the irrigation system, as provided for by the Public Irrigation Law of 1908, as amended in 1911 and 1913. The assessments made by these acts were valid because they were based upon a law which provided that the benefit from the improvement must be greater than the burden and each land owner affected could have his day in court. For the $1,225,000 authorized to be spent by the Acts of 1917, 1921, 1925, 1927 and 1929, the owners of land within the permanent irrigation district are unlawfully taxed in an amount sufficient to pay interest and principal upon the bonds issued thereunder.

Section 2 of Act No. 49 of 1921, which is the law in question here, therefore provides for a tax which is not necessary to defray any of the expenses for the construction or operation of the irrigation system.

If the tax levied by the law in question here were a special assessment the proceeds of the tax must be used to pay the cost of the improvement. To be levied as a special assessment it could only be levied if the benefit received was greater than the burden imposed, and the taxpayer must have the right to be heard on that proposition by the assessing body with the right of review in the courts.

The tax, however, as we have shown, is not necessary for the payment of the cost of the irrigation system.

Nevertheless, it is used not only for the payment of the cost of the irrigation system but also for the payment of the cost of constructing the hydro-electric plants provided to be built in the acts enacted subsequent to 1913. Act No. 49 of 1921 (page 368) expressly provides that the moneys collected under it by the treasury:

> "shall be covered into the Insular Treasury to the credit of a special trust fund known as the 'Irrigation Fund,' to be invested in the same manner and for the same purposes provided by the Public Irrigation Law and laws amendatory thereof."

If the taxes in question here are collected they will be used to pay for the cost of the irrigation system, from which respondents receive no benefit. They will be used to pay for building hydro-electric plants belonging to the People of Porto Rico, from which respondents receive no benefit. The large mass of property owners of Porto Rico

who receive no benefit from the irrigation system are not taxed.

Perhaps only the respondents in this case from among all those property owners in Porto Rico who receive no benefit from the irrigation system are taxed.

Upon the plainest principles of the law of taxation Act No. 49 of 1921 cannot be supported whether considered as a tax upon property or as a special assessment.

In 37 Cyc. 736, it is said:

> "Uniformity requires that all taxable property shall be alike subjected to the tax, and this requirement is violated if particular kinds, species, or items of property are selected to bear the whole burden of the tax, while others, which should be equally subject to it, are left untaxed. Further, it is implied that each tax shall be uniform throughout the taxing district involved. A state tax must be apportioned uniformly throughout the state, a county tax throughout the county, and a city tax throughout the city."

In *Redmond* v. *The Commissioners*, 106 N. C. 122, the court, in speaking of a constitutional provision that taxes should be uniform upon all property, says, at page 127:

> "We are of opinion that section 9, Art. 7, was not intended to apply the rules of uniformity and equality to the subjects which the Legislature might alone select for taxation, but that it requires that all property shall be taxed, and taxed in accordance with the said rules."

If it were otherwise the same court said:

> "* * * it would be in the discretion of the Legislature to unequally distribute the burden neces-

> sarily incident to government, and the worst species of class legislation would be tolerated."

In *Gilman* v. *City of Sheboygan*, 2 Black 510, at page 517, the court approved the following statement:

> "The uniformity must be coextensive with the territory to which it applies. If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does not stop here. It must extend to *all property* subject to taxation, so that all property may be taxed alike—equally—which *is* taxing by uniform rule."

See also:

Chicago & Northwestern Railway Company v. *State*, 128 Wisconsin 553, 603, 604;
Board of Commissioners v. *State*, 155 Indiana 604;
Hager, State Auditor v. *Walker*, 128 Kentucky 1;
Hamilton v. *Wilson*, 61 Kansas 511;
Chancellor v. *Elizabeth*, 64 New Jersey Law 502;
Dundee Mortgage, etc., Co. v. *School District No. 1*, 19 Fed. 359.

Certainly the tax attempted to be levied by Act No. 49 of 1921 is not uniform.

There is a well recognized exception to the rule of uniformity in the case of a tax which is a special assessment for a particular benefit as distinguished from a general tax levied to enable the taxing authority to meet the general expenses of government. As is said at 37 Cyc. 731:

> "The requirement of equality and uniformity applies only to taxes in the proper sense of the word, levied with the object of raising revenue for general purposes and not * * * to local assessments for improvements levied upon properties specially benefited thereby."

The distinction between a general tax and a special assessment is well expressed in *Illinois Central Railroad Company* v. *Decatur*, 147 U. S. 190 at 197:

> "Between taxes, or general taxes as they are sometimes called by way of distinction, which are the exactions placed upon the citizen for the support of the government, paid to the State as a State, the consideration of which is protection by the State, and special taxes or special assessments, which are imposed upon property within a limited area for the payment for a local improvement supposed to enhance the value of all property within that area, there is a broad and clear line of distinction, although both of them are properly called taxes, and the proceedings for their collection are by the same officers and by substantially similar methods. Taxes proper, or general taxes, proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all. 'The public revenues are a portion that each subject gives of his property in order to secure or enjoy the remainder.' * * *

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> "On the other hand, special assessments or special taxes proceed upon the theory that when a local improvement enhances the value of neighboring property that property should pay for the improvement. In *Wright* v. *Boston*, 9 Cush. 233, 241, Chief Justice Shaw said: 'When certain persons are so placed as to have a common interest among themselves, but in common with the rest of the community, laws may justly be made, providing that, under suitable and equitable regulations, those common interests shall be so managed, that those who enjoy the benefits shall equally bear the burden.' In *McGonigle* v. *Alleghany City*, 44 Penn. St. 118, 121, is this declaration: 'All these municipal taxes for improvement of streets, rest, for their final reason, upon the enhancement of private properties.' In *Litchfield* v. *Vernon*, 41 N. Y. 123, 133, it was stated that the principle is, 'that the territory subjected thereto would be benefited by the work and change in question.' * * *"

To the same effect are *Roosevelt Hospital* v. *Mayor, etc., of New York*, 84 N. Y. 108 at 112; *Caverly-Gould Co.* v. *Village of Springfield*, 83 Vermont 396 at 404.

Cooley in Section 31, page 105, of his fourth edition on Taxation aptly makes the distinction in these words:

> "A special assessment is in the nature of a tax upon property levied according to benefits conferred on the property. The whole theory of a special assessment is based on the doctrine that the property against which it is levied derives some special benefit from the improvement. The justice of demanding the special contribution is supposed to be evident in the fact that the persons who are to make it, while they are made to bear the cost of a public work, are at the same time to suffer no pecuniary loss thereby;

> their property being increased in value by the expenditure to an amount at least equal to the sum they are required to pay."

What name is given by the statute to a levy is immaterial in determining whether it is a general tax or a special assessment. In *People ex rel. Doyle* v. *Austin*, 47 Cal. 353, it is held that if a statute calls that a tax which has the elements of an assessment it is an assessment. At page 358 the court says that an assessment and a tax

> "* * * are essentially different in their nature, and designating as a tax that which in its elements is an assessment, can have no effect in determining whether it is one or the other. The question must be decided by the nature of the imposition, and not by a mere name by which it is called."

To the same effect are:

> 37 Cyc. 711-713;
>
> *Worsley, et al.* v. *Second Municipality of New Orleans*, 9 Rob. (La.) 324, 333-334;
>
> *State* v. *New Orleans Navigation Company*, 11 Mart. (La.) 309, 324;
>
> 5 *McQuillan, Municipal Corporations*, Sec. 2018, page 4329, ff.

There is no possibility of doubt that Act No. 49 of 1921 is an attempt to lay a punitive tax upon land of a certain limited class and to support such enactment by calling it a special assessment for improvements. If the imposition is a special assessment it must be used to pay the cost of the improvement and must be based upon a corresponding benefit to the lands burdened, or it cannot legally be im-

posed. It is our contention that the lands of the respondents do not derive any benefit from the construction and/or operation of the irrigation system or the hydro-electric system, that what water is received is water belonging to defendants which the Government could be enjoined from restraining, and that the act in this aspect is invalid because it does not levy a general tax throughout the Island of Porto Rico to defray the governmental expenses resultant from the operation of the irrigation system and the hydro-electric system. In addition, we have shown above that the irrigation law provides for a tax upon the lands that are benefited—the lands in the permanent irrigation district—sufficient to pay the expense of constructing and operating the irrigation system and the hydro-electric system, and that the amount of the tax sought to be levied upon the defendants here is in no wise needed for either the construction or operation of the irrigation system or the hydro-electric system, although the money received from this tax is placed in the "Irrigation Fund" and is, by the words of the law, usable both for construction and maintenance.

Apart from torrential water respondents' predecessor in title and their lessors were entitled under the concessions to take for Fortuna, Cristina, Luciana and Serrano an aggregate of 12032.78 acre feet of water (Record, p. 33), and for Union and Placeres 1579.31 acre feet of water (Record, p. 49). The contract with Fortuna Estates provided that 8258.98 acre feet delivered uniformly throughout the year, together with the right to take additional water if and when available in the river bed, were "the fair equivalent in value of the water to which these properties were entitled under the concessions" (Record, p. 36). The amount of water delivered to Union and Placeres as the fair equiva-

lent was 946.55 acre feet (Record, p. 53). The reduction in the contracts of the amounts allowed by the concessions varied in the case of each estate and was, in the words of the court in *People of Porto Rico* v. *Russell & Company,* 268 Fed. 723, at 727;

> "grounded on the principle of equivalence, and the variation in the percentage to the different estates obviously rests on the order of suspension in times of shortage"

as shown in Schedule D on page 43 of the record.

The Government agreed when it made the contracts that the only benefit which the concession holders would obtain from the construction of the Guayabal Dam was in more uniform delivery of water, and as compensation for this sole benefit respondents' predecessor, Fortuna Estates, gave up approximately twenty-five per cent. (25%) of the water to which it was entitled, and the owners of Union and Placeres gave up approximately forty per cent. (40%) of their water.

It is not necessary for us to point out that the respondents' predecessor and their lessors received no legal benefit from the construction of the irrigation system for which they could be taxed by a special assessment. The contracts speak for themselves when they say that the lesser amounts of water, together with the additional water the right to take which, when and if available in the Jacaguas River bed is provided for, "are the fair equivalent in value of the water which" the concessionaires take "under and pursuant to the concessions and water rights claimed" by them (Record, pp. 36, 52).

The contracts by their very words bar all consideration of actual or legal benefit.

The District Court in the injunction suit said in its opinion:

> "The contracts provide for a fair exchange and nothing more, and I believe this fact alone is decisive of this case. Complainants agree to take certain stated amounts of water delivered daily by the Irrigation Service at regular times and places in place of the greater quantities of water to which it was entitled under its Spanish concessions but which were uncertain as to their amount and uniformity and depended upon the rainfall, while the People of Porto Rico as a consideration for getting the Spanish concessions out of the way and being able to go ahead with its proposed irrigation project agrees to give complainants certain specified amounts of water delivered uniformly from day to day. The parties specifically agree that the delivery of these specified amounts in equal daily quantities is the fair equivalent of the water to which they were entitled under its Spanish concession."

The contracts of August 26, 1914, are binding upon the parties by Section 13 of the Irrigation Law (Laws of Porto Rico, 1913, p. 72). Express authority was given to the Commissioner of the Interior to enter into the contracts in question, which authority could be exercised only after consulting the Attorney General of Porto Rico "as to the validity and legal status of the water rights or concessions involved."

Section 1058 of the Civil Code (Revised Statutes and Codes of Porto Rico, Section 4154, p. 718) provides that:

> "Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations."

Section 1223 of the Civil Code (Revised Statutes and Codes of Porto Rico, Section 4329, p. 736) says that:

> "The validity and fulfillment of contracts can not be left to the will of one of the contracting parties."

In *Hoogendorn* v. *Daniel,* 178 Fed. 765 at 768, the court says:

> "If authority is needed upon a proposition so plainly founded on equitable principles, a case in point is Stewart *v.* Metcalf, 68 Ill. 109, in which it was held that, in the absence of fraud, a party to a written contract will be estopped from averring anything against the deliberate recitals and admissions contained in the same, especially when it will prejudice and work injury to others who have acted in good faith upon the belief of the facts as stated in the contract."

The general rule is well stated in 21 Corpus Juris 1111, where it says:

> "If, in making a contract, the parties agree upon or assume the existence of a particular fact as the basis of their negotiations, they are estopped to deny the fact so long as the contract stands."

Porto Rico as a sovereign is as much bound by principles of estoppel as an individual.

The words of the court in *United States* v. *Willamette, etc., Co.,* 54 Fed. 807, at 811, are as follows:

> "* * * where the government has acted by legislative enactment, resolution, or grant, or otherwise than through the unauthorized or illegal acts of its agents, and the parties dealing with the government have relied upon the same, and in good faith

> have so changed their relation to the subject-matter thereof that it would be inequitable to declare such action or grant illegal, the government will be estopped. *Com.* v. *Andre,* 3 Pick. 224; *Cahn* v. *Barnes,* 7 Sawy. 48, 5 Fed. Rep. 326; *State* v. *Milk,* 11 Fed. Rep. 397; *Pengra* v. *Munz,* 29 Fed. Rep. 830; *Woodruff* v. *Trapnall,* 10 How. 190. No good reason can be offered why the United States, in dealing with their subjects, should be unaffected by considerations of morality and right which ordinarily bind the conscience. * * * when matter of estoppel arises, the observance of honest dealing may become of higher importance than the preservation of the public domain. It was well said in *Woodruff* v. *Trapnall* that we naturally look to the action of a sovereign state to be characterized by a more scrupulous regard to justice and a higher morality than belong to the ordinary transactions of individuals."

In *Mobile Gas Company* v. *Patterson,* 293 Fed. 208, 221, the court quotes with approval an earlier Circuit Court of Indiana case, *State of Indiana* v. *Milk,* 11 Fed. 389, 397, saying:

> "Resolute good faith should characterize the conduct of states in their dealings with individuals, and there is no reason, in morals or law, that will exempt them from the doctrine of estoppel."

To the same effect are:

> *State of Louisiana* v. *Ober,* 34 La. Ann. 359;
> *Fletcher* v. *Peck,* 6 Cranch 87;
> *People* v. *Hagadorn,* 104 N. Y. 516;
> *People* v. *Wainwright,* 205 App. Div. (N. Y.) 505.

Respondents stand in the shoes of the original parties who contracted with the People of Porto Rico.

The respondents are receiving nothing more than they are entitled to receive under the terms of the contracts.

The consideration which moved the concession holders to make the contracts of August 26, 1914, was the very water which it is claimed constituted a benefit conferred on the defendants by the People of Porto Rico, the argument being that if the defendants get any water at all from the irrigation service they are receiving a benefit.

The People of Porto Rico instead of conferring a benefit upon the predecessor of the respondents and upon their lessors by making the contracts of August 26, 1914, was the recipient of a benefit. The recitals in the contract (Record, pp. 35, 51) show that the contracts were made in order "to facilitate and make more certain the operation of the said dam and the irrigation system of which it is a part." If the contract had not been made the People of Porto Rico would have been compelled either to let all the water in the Jacaguas River flow down the channel or pay for the concessions of Fortuna Estates and J. A. Poventud and his co-owners after condemning the concessions.

The attempted tax provided for by Act No. 49 of 1921 is indefensible either as a special assessment or as a general tax, and the District Court so held (Record, p. 68).

POINT V.

By Act No. 49 of 1921 the respondents are deprived of property without due process of law.

The Porto Rican Bill of Rights provides

> "That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty or property without due process of law." (39 Statutes at Large, 951, Sec. 2.)

The concessions from the Kingdom of Spain owned by respondents and by their lessors and the right thereunder to receive water from the Jacaguas River are valuable property rights.

In 32 Cyc. at page 647 it is said: "The term 'property' * * * extends * * * to every species of valuable right or interest, in either real or personal property, or in easements, franchises and incorporeal hereditaments."

Property is said, in *Metropolitan City Railway Company* v. *Chicago, etc., Railway Company*, 87 Ill. 317 at 324, to include "all rights and interest in real and personal property, and also in easements, franchises and incorporeal hereditaments."

That franchises are property is unquestionable.

> *Gulf, etc., Railroad Company* v. *Hewes*, 183 U. S. 66;
> *Monongahela Nav. Co.* v. *U. S.*, 148 U. S. 312;
> *Wilmington R. R.* v. *Reid*, 13 Wall. 264.

Although it is the ruling of the Circuit Court of Appeals that the Spanish concessions of respondents and their

lessors are suspended while the contracts remain in force, it is nevertheless true that our right to take water from the Jacaguas River depends on the concessions and is simply embodied in slightly different form in the contracts of August 26, 1914. The difference is that so long as these contracts are in force we must look to them to ascertain the exact manner in which we are to receive and enjoy certain property granted to respondents by the Spanish Government.

If, however, the People of Porto Rico in any way diminish our rights to receive water under the contracts or impose a burden upon the receipt of that water, such diminution and such burdening constitute an impairment and confiscation of our rights both under the contracts and under the concessions.

The tax is in form upon the lands to which are appurtenant the concessions, but as a matter of fact the tax is upon the water itself and as such is a diminution of and burden upon our property rights.

That the basis of any special assessment is a corresponding benefit conferred by the taxing authority is elementary. In *McQuillan on Municipal Corporations*, Vol. 5, at page 4378, the author says: "* * * the fundamental theory that must be adhered to in imposing special assessments on property, and from which alone the right is derived to impose such assessments, is that such property derives a benefit from such improvement commensurate with the amount of the assessment imposed upon it." A violation of this principle in levying a special assessment constitutes the taking of property without due process of law.

The words of the court in *Thomas* v. *Gain*, 35 Mich. 155 at 162, are:

> "But it is generally agreed that an assessment levied without regard to actual or probable benefits is unlawful, as constituting an attempt to appropriate private property to public uses."

To the same effect is *Norwood* v. *Baker*, 172 U. S. 269.

If a special assessment for a public improvement exceeds the value of the benefit to the property assessed, it constitutes, as to the excess, a taking of property without due process of law. (5 *McQuillan Municipal Corporations*, pages 4455-4457). This principle the Public Irrigation law recognizes, as we show above.

In the case at bar, the People of Porto Rico, without the consent of the respondents' predecessor in interest and its lessors, could by express provision of the Irrigation Law have condemned the old Spanish concessions by paying the value which was fixed for them in condemnation proceedings. It did not do this.

The government could have arranged with the respondents' predecessor and their lessors for the relinquishment of these concessions at a price mutually agreed upon, which price would have been paid to the concession holders by credits upon the taxes due from them because of the inclusion of their lands in the irrigation district. The concession holders, however, were not willing to surrender their concessions, as is shown by the execution of the contracts.

The only thing left, therefore, was for the Commissioner of the Interior to enter "into agreements with such owner or owners as to the amount of water and the time, place and conditions of delivery thereof, which shall be delivered to the lands to which the said water rights or concessions are appurtenant as the fair equivalent in value thereof * * * and for the delivery to the lands to which the said

water rights or concessions are appurtenant of such fair equivalent" (Laws of 1913, Extraordinary Session, p. 72).

This only recourse was availed of and by the contracts between respondents' predecessor and their lessors certain quantities of water to be delivered uniformly throughout the year, together with certain additional water to be taken when and if available in the river bed, were solemnly agreed to be "the fair equivalent in value of the water, which" the concession holders had the right to take "under and pursuant to the concessions and water rights" owned by them, and the People of Porto Rico solemnly agreed by notarial instrument to deliver this equivalent amount of water without equivocation and without reserving the right to tax it or the lands upon which it was used because of such delivery or such use.

In both contracts it was provided (paragraph Eleventh, Record, p. 37; paragraph Tenth, Record, p. 52) that the delivery to and use by the concessionaires of water in accordance with the terms and conditions of the contracts should not "in any event affect or modify the present existing status of the water rights and concessions" owned by the concessionaires, but that such delivery and use was to be made "in view of the modified physical conditions resulting in the bed of the River Jacaguas from the establishment of the public irrigation system, which on the one hand henceforth permit the delivery to and the use by the" concession holder "of a substantially uniform flow of water, as provided in this agreement, and on the other, modifies to some extent the use of the water heretofore made by the" concession holder.

The contracts were contracts of exchange, and were not meant, nor have they turned out to be, contracts whereby

the concession holders were in any way benefited by the irrigation system. On the contrary, the contracts resulted in the defendants receiving less water and being forced to resort to the courts in order to compel the People of Porto Rico to live up to the solemn agreements which they had obtained, not as a matter of right but as a matter of grace, from respondents' predecessor in title and from their lessors.

The words of the opinion in *O. & C. R. R. Co.* v. *Portland*, 25 Ore. 229, at page 240, are particularly pertinent:

> "* * * there are cases in which the exercise of the power of assessment becomes such a flagrant abuse that they (the courts) must interfere to prevent the confiscation of property. In this case it clearly appears that the property of the plaintiffs was in no way benefited by the alleged improvement, and hence there was no foundation for * * * the assessment of such property for its cost or any part thereof. Under such circumstances the enforcement of the assessment would be 'taking property without due process of law'."

In *Walsh* v. *Barron*, 61 Ohio State 15, the court says, at page 24:

> "Upon the admitted averments of the pleading the naked question here presented is, whether an assessment may be made upon the property of an owner for the cost of a public improvement, that is * * * in excess of the benefits conferred on it * * *. By no refinement of reasoning can it be construed to be anything else than the taking of private property for public use without compensation. According to the best considered of the modern cases and the most reliable authorities, an assessment, being

> sustainable only on the theory of special benefits conferred on the land by the improvement over those received by the general public, is necessarily limited to the value of the benefits so conferred. The value of the entire benefits so conferred may be assessed upon the land for the cost of the improvement; more, however, cannot be exacted, without impairing the inviolability of private property, guaranteed by the constitution, or in other, if not more appropriate words, confiscating it."

In *Tidewater Company* v. *Coster,* 18 N. J. Equity 518, the court considered an act of the legislature authorizing a tax on owners of certain lands to be benefited by a proposed reclamation project which would cover the entire cost of the project. The court held the act void and granted an injunction restraining the carrying out of the plan, because the law did not limit the assessment to the amount of the benefits received. The court said at page 527:

> "If this scheme be carried into effect, in the event of an excess of expenses over benefits, private property, *pro tanto,* will be taken for public use without compensation."

The same court clearly stated the principle that when a local improvement is to be put through the excess of the cost over the actual benefits to the property whose value is enhanced by the improvement must be borne by the public as a part of the general expenses of government. It is stated at page 528:

> "The consideration for the excess of the cost of the improvement over the enhancement of the property, within the operation of this act, is the public benefit; how, then, upon any principle of taxation,

> can this portion of the expense be thrown exclusively upon certain individuals? The expenditure of this portion of the cost of the work can only be justified on the ground of benefit to the public. I am aware of no principle which will permit the expenses incurred in conferring such benefit upon the public, to be laid in the form of a tax upon certain persons, who are designated not indeed by name, but by their description as the owners of certain lands. A legislative act, authorizing the building of a public bridge, and directing the expenses to be assessed on, A, B and C, such persons not being in any way peculiarly benefited by such structure, would not be an act of taxation, but a condemnation of so much of the money of the persons designated, to a public use."

Even if it could be said that the tax sought to be imposed here was in the nature of a special assessment, nevertheless it cannot be supported if the tax itself is analyzed.

Special assessments must be specifically evaluated as against the property benefited. The Irrigation Law as amended in 1913 provides for an assessment almost necessarily varying from year to year, depending upon (1) the interest on the outstanding bonds necessary to be paid, (2) payments upon the principal of the bonds necessary to be made, (3) amount of the sinking fund required by the terms of the bonds, (4) the estimated cost of operating the irrigation system for the ensuing year, and (5) the estimated deficit or surplus for the current year's operation. It is ludicrous to think that the benefits accruing to the lands in the permanent irrigation district so assessed will vary in the same way. In years of high taxes there may be a shortage of water and consequently less benefit to the land irrigated. In a year of low taxes there may be an excess of water and great benefit to the land irrigated.

In the same way, although the cost of the construction, maintenance and operation of the irrigation system is now borne and must continue to be borne by the lands in the permanent irrigation district, the tax assessed under Act No. 49 of 1921 on respondents' lands will vary from year to year and will necessarily have no relation to the year by year benefits from the use of the water.

Can such variable factors control in determining the amount of the cost of a special improvement, part of which cost is attempted by Act No. 49 of 1921 to be assessed against and collected from respondents?

In theory the benefits accruing to property from a betterment supporting a special assessment tax must be fixed before the tax is assessed. The Irrigation Law did not fix these benefits but provided that whatever the cost was and whatever the ratio between benefit and cost, nevertheless, the total cost, not only of construction but of operation, must be borne by the properties included in the permanent irrigation district. The cost of the improvement was, therefore, assessed against the lands in the permanent irrigation district. From that time on no other tax could be levied by way of a special improvement tax for the expense of constructing and operating the irrigation system.

Nevertheless, Act No. 49 of 1921 attempts to fasten on the respondents' land a part of the cost, the payment of which in full had theretofore been assessed against the property in the permanent irrigation district.

Beyond question Act No. 49 of 1921 attempts to levy a special assessment upon the respondents without any corresponding benefit received therefor. It constitutes a taking of the property of respondents without due process of law and is void. The District Court so held (Record, p. 68).

POINT VI.

The respondents are denied the equal protection of the laws by Act No. 49 of 1921.

The Porto Rican Bill of Rights (39 Statutes at Large 951, Section 2) provides:

> "That no law shall be enacted in Porto Rico which shall * * * deny to any person therein the equal protection of the laws."

As we have shown above in Point V, it is a well settled rule that the cost of local improvements in excess of the benefits actually derived by lands within the assessment area must be borne by the public at large through general taxation as one of the ordinary expenses of government. As we have also shown above, the total cost of the construction and operation of the irrigation system is imposed by the Irrigation Law on lands in the permanent irrigation district. Consequently there can be no further assessment based upon the theory that the irrigation system constitutes a betterment for which special assessment may be levied.

If no tax by way of a special assessment, other than the tax provided in the Irrigation Law, can be levied in connection with the irrigation system, then any tax that may be levied in connection with the irrigation system must be levied as a general tax which must apply uniformly.

The irrigation system undoubtedly provides benefits for growers of sugar cane who, unlike the respondents, do not have other sources of water. On such benefited class a special assessment up to the amount of the increase in value resulting to their lands from the construction and

operation of the irrigation system would be proper, but the imposition of the entire expense of constructing and operating the system on this class of benefited persons, irrespective of the benefits derived, produces an unreasonable classification of taxpayers and effects a deprivation of the equal protection of the laws. This defense against the special assessment provided for by the Irrigation Law was open to those whose properties were included in the permanent irrigation district.

Need we do more than merely state that Act No. 49 of 1921 has even less justification in law than the Irrigation Law itself? The Irrigation Law provided for a class benefited thereby which should pay the total expense of constructing and operating the system. So long as that law remains on the statute books no other law can be passed putting part of such expense upon a small class of property owners who receive no benefit from the improvement.

Act No. 49 of 1921 constitutes as to the respondents a denial of the equal protection of the laws.

In *Gulf, Col. & Santa Fe Railway Co.* v. *Ellis*, 165 U. S. 150, at 165, Mr. Justice Brewer said:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

Part of the opinion in *Nashville C. & St. L. Railway* v. *Taylor*, 86 Fed. 168, at 185 is:

> "When the state itself undertakes to deal with its citizens by legislation, it does so under certain limitations, and it may not single out a class of citizens, and subject that class to oppressive discrimination, especially in respect to those rights so important as to be protected by constitutional guaranty. That the prohibitions of that amendment are now regarded as protecting the citizen against a denial of the equal protection of the law, and against taking property without due process of law, under the power of taxation, is a proposition clearly deducible from the many causes in which that question has been considered. * * * Whether the question be considered upon principle or upon judicial authority, it might be well said, I think, that no power is more liable to abuse, or more destructive in its effect when exercised with an unequal and uneven hand, than the power of taxation. * * * When, in addition to the violation of the state constitution, the statute results in an arbitrary and oppressive discrimination in regard to a large class of citizens or a large species of property, it is such class legislation and such denial of the equal protection of the laws as renders it obnoxious to the fourteenth amendment."

The court in *The Railroad Tax Cases*, 13 Fed. 722, at 733, used these words:

> "The fourteenth amendment to the constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation. * * * Unequal exactions in every form, or under any pretense, are absolutely forbidden; and of course unequal taxation, for it is in that form

> that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible."

Mr. Justice Brewer in *Cotting* v. *K. C. etc. Co.*, 183 U. S. 79, at page 106, said:

> "But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."

It is our contention that the tax attempted to be levied by Act No. 49 of 1921 was aimed solely at the land owned and leased by respondents. Such an arbitrary selection of those who shall pay a tax constitutes discriminatory legislation of the most aggravated sort.

In *Detroit, etc., Railroad Company* v. *Fuller*, 205 Fed. 86, it was held that a tax on the stock, bonds and other evidences of indebtedness of specially chartered railroad companies, when there was only one such company, was invalid as class legislation in violation of the fourteenth amendment to the Constitution.

It is evident that to the extent that property is not benefited by an improvement—and respondents' property is in no wise benefited by the irrigation system—the imposition of a tax on property which happens to lie near the scene of the improvement and not on other lands in the tax district, which in this case is the Island of Porto Rico, is an entirely arbitrary and unreasonable classification and is a denial, to those affected, of the equal protection of the laws.

Act No. 49 of 1921 does not even purport to apply to

property benefited by the irrigation system. It merely levies a tax on lands supplied with water from the irrigation system and which are not subject to the payment of the tax levied by the Irrigation Law to meet the cost of the irrigation system. There is not only no appraisal of benefit but the need for benefit is expressly denied.

Certainly Act No. 49 of 1921 sets up an unreasonable classification, produces unquestionable discrimination and is, therefore, void. The District Court so held (Record, p. 68).

POINT VII.

Act No. 49 of 1921 is in conflict with the Treaty of Paris.

By the Treaty of Paris, concluded on December 10, 1898, and proclaimed April 11, 1899, Spain ceded the Island of Porto Rico to the United States (*Malloy, Treaties,* Volume 2, page 1690). By this treaty the sovereignty of the Island was transferred and the obligations formerly of Spain became those of the United States.

In *33 Corpus Juris,* page 411, it is said:

> "Ceded territory forthwith comes under the complete and absolute sovereignty of the nation to which it has been ceded, and the allegiance of its inhabitants, and *the duty of protection to them,* devolves upon the new sovereignty." (Italics ours.)

It is an established principle of international law that when territory is ceded the property rights of the inhabitants will be protected by the new sovereign. Speaking of a Porto Rican situation, involving water rights similar to

those owned by defendants, it is said in 22 Opinions of the Attorney General 546, at page 548:

> "If at the time the treaty of Paris took effect the applicant had a completed and vested right to the use of the waters of the River Plata, that right will be respected by the United States."

This principle of international law is so well recognized that it will be enforced even if there is no express stipulation in the treaty of cession requiring property rights of inhabitants to be respected.

In *Ely's Administrator* v. *United States*, 171 U. S. 220, at page 223, the court said:

> "In other words, in harmony with the rules of international law * * * the change of sovereignty should work no change in respect to rights and titles; that which was good before should be good after; that which the law would enforce before should be enforcible after the concession."

To the same effect are:

Ainsa v. *United States*, 161 U. S. 208, 220;
United States v. *Percheman*, 7 Peters 51, at page 86;
De Lima v. *Bidwell*, 182 U. S. 1;
Fourteen Diamond Rings v. *United States*, 183 U. S. 176;
United States v. *Moreno*, 1 Wall. 400, at 404.

By Article Sixth of the Constitution treaties are declared to be the supreme law of the land, and referring to a state law contrary to the provisions of a treaty, it is said in *Baker* v. *Portland*, 2 Federal Cases No. 777, at page 474:

> "* * * the treaty furnishes the law, and with that treaty no state or municipal corporation thereafter can interfere. Admit the wedge of state interference ever so little, and there is nothing to prevent its being driven home and destroying the treaty and overriding the treaty-making power altogether."

In *Worcester* v. *Georgia*, 6 Peters 515, it was held that a state statute which conflicted with a treaty must be governed by the treaty.

As we have shown above, the Spanish concessions of respondents and their lessors constitute property, and Act No. 49 of 1921 effects a confiscation of that property. The act is clearly in contravention of the rights of respondents and their lessors secured to their predecessors in title by the Treaty of Paris, and the act must bow before that treaty. The District Court so held (Record, p. 76).

POINT VIII.

Act No. 49 does not provide for any hearing or appeal before the taxes become fixed and is void.

It is well settled in the law of taxation that property shall not be taken under a tax levy without the taxpayer having had an opportunity to be heard. A hearing is a necessary element of that due process which is guaranteed.

In *Londoner* v. *Denver*, 210 U. S. 373, the court dealt with a special assessment for the cost of paving a street upon which the taxpayer's property abutted. No provision was made in the law for a hearing, and the court said at page 385:

> "* * * where the legislature of a State * * * commits to some subordinate body the duty of deter-

> mining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that at some stage of the proceedings before the tax becomes irrevocably fixed, the taxpayer shall have an opportunity to be heard, of which he must have notice, either personal, by publication, or by a law fixing the time and place of the hearing."

Charles v. *Marion,* 100 Fed. 538, dealt with a similar statute levying a special assessment for the cost of a street improvement. At page 542 the court said of this statute:

> "It provides for no notice and hearing to ascertain and determine the actual benefits specially received by the landowner by reason of such improvements * * *. Such legislation is unconstitutional and void, under both federal and state constitutions, because it constitutes a taking of property without just compensation, and is a denial of the equal protection of the law."

Act No. 49 of 1921 makes no provision for notice, hearing or appeal. It does not concern itself with the actual benefits to be received and the Legislature had no intention of having the tax based upon benefits received. The sole purpose of the Legislature was to penalize respondents.

The omission of provision in Act No. 49 for notice, hearing or appeal is not saved by the provisions of the General Tax Law relating to hearings. The only provision in Act No. 49 regarding the levy and collection of this tax is that contained in the last paragraph of Section 2 that

> "This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law."

This provision provides merely for the time of levy and collection and not for the manner.

Nor in the Irrigation Law itself (Laws of Porto Rico, 1913, Section 11, page 70) is there any provision which will aid. The provision in the main law is that the irrigation taxes shall be collected and the collection enforced as then or thereafter provided by law in the case of the collection and enforcement of other real property taxes. There is, therefore, nothing in the Irrigation Law expressly incorporating in it the provisions of the General Tax Law in regard to hearings (Compilation of Revised Statutes and Codes of Porto Rico, Section 2960 ff.). They are not included by reference because on the doctrine of *expressio unius* the inclusion of the provisions in the 1921 Act for levy and collection and in the 1913 Act for collection and enforcement necessarily excludes the incorporation of any provisions not mentioned.

By their very nature irrigation taxes are out of the category of general property taxes. Irrigation taxes do not depend upon the value of the land but are merely assessments upon land to pay a definite and determined expense of construction and operation dependent wholly upon benefits received.

Because of the absence of any provision for hearing and appeal Act No. 49 of 1921 is invalid as in contravention of the Bill of Rights. The District Court so held (Record, p. 68).

POINT IX.

Act No. 49 of 1921 delegates to administrative officers the legislative function of levying the tax and is void.

Section 1 of Act No. 49 of 1921 (Laws of Porto Rico, 1921, page 366), provides:

> "That a special tax is hereby levied in addition to other taxes already fixed by law, on all parcels of land which for irrigation purposes are supplied with water from the southern coast public irrigation system constructed and in operation pursuant to the provisions of the Public Irrigation Law and amendments thereto, but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system."

Section 2 provides the method by which the Treasurer of Porto Rico fixes the total number of acres receiving water from the irrigation system; provides for an estimate by the Commissioner of the Interior of the cost of operating and maintaining the irrigation system during each fiscal year; and then provides that the Treasurer shall divide the amount estimated by the Commissioner by the number of acres receiving water from the irrigation system; and the quotient it is said:

> "shall be and shall constitute the tax per acre which shall be levied during said subsequent fiscal year on all tracts supplied with water from the southern coast public irrigation system, and which in no other manner are subject to the payment of a tax to meet the cost of the said irrigation system.

> This tax shall be levied and collected by the Treasurer of Porto Rico at the same time as any other tax imposed by the Public Irrigation Law, * * *."

From the above it will be seen that Act No. 49 of 1921 gives the Treasurer of Porto Rico in conjunction with the Commissioner of the Interior the right in his absolute discretion to determine those who shall pay the tax, what the total amount shall be, and the rate. Not only does the act do this but in addition it gives to the Treasurer the right to levy. There could not be a more flagrant instance of delegation to administrative officials of the power to take private property in the guise of taxation.

The exercise of the taxing power is a function which is legislative and not administrative.

Legislative functions cannot be delegated to administrative officials.

In 37 Cyc., page 725, we find these words:

> "It is not competent for the legislature to delegate its power of taxation, wholly or in part, to either of the other departments of government, or to any individual, private corporation, officer, board, or commission."

In *Cooley on Taxation*, 4th Edition, Volume I, page 184, the learned author says:

> "It is a general rule of constitutional law that a sovereign power conferred by the people upon any one branch or department of the government is not to be delegated by that branch or department to any other. This is a principle which pervades our whole political system, and, when properly understood, admits of no exception. And it is applicable with peculiar force to the case of taxation. The people

> have created a legislative department for the exercise of the legislative power; and within that power lies the authority to prescribe the rules of taxation, and to regulate the manner in which those rules shall be given effect. The people have not authorized this department to relieve itself of the responsibility by a substitution of other agencies. The power to impose taxes being purely legislative, the legislature cannot delegate the taxing power, * * * either to the executive department of government or to the judicial department * * *."

The reason for the exercise, solely by the legislature, of the power to tax is found in the opinion of Chief Justice Marshall in *M'Culloch* v. *Maryland*, 4 Wheat. 316, at page 428:

> "The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax the legislature acts upon its constituents. This is in general a sufficient security against erroneous and oppressive taxation.
>
> The people of a State, therefore, give to their government a right of taxing themselves and their property, and as the exigencies of government cannot be limited, they prescribe no limits to the exercise of this right, resting confidently on the interest of the legislator, and on the influence of the constituents over their representative, to guard them against its abuse * * *."

The taxing act must not only lay down the method by which administrative officials are to assess the tax but it must fix the amount to be collected either as a sum certain or by selecting the subjects of the tax and declaring what the rate shall be.

We read in *Cooley*, Volume I, page 194:

> "The nondelegable powers, *i. e.*, the powers which cannot be delegated to merely ministerial or judicial officers, include the selection of the property to be taxed, * * * the fixing of the amount of the tax to be imposed, the fixing of the rate of taxation, * * *."

And again in Volume 3, page 2044:

> "* * * a levy is the legislative act, whether state or local, which determines that a tax shall be laid, and fixes its amount * * *. It is to be distinguished from an assessment, although sometimes the term is loosely used as including the assessment. The 'levy' fixes the subject and rate of taxation and is a legislative function; the 'assessment' consists in making a list of the taxpayer's property and fixing its valuation, and is quasi judicial."

A case almost directly in point is *Van Cleve* v. *The Commissioners*, 71 New Jersey Law 574. In this case the act under consideration authorized the levying of a sewer tax on a district in an amount, depending solely on the judgment and discretion of a commissioner, up to nine million dollars for construction and in an unlimited amount for maintenance. The ratio of assessment for maintenance was to be based on the amount of sewage discharged into the sewers. It was held that the act was unconstitutional and invalid as an attempted delegation of the legislative function of determining the amount of the tax. The court said at page 581:

> "Every system of taxation consists of two parts —the elements that enter into the imposition of the tax and the steps taken for its assessment and col-

> lection. The former is a legislative function, conserved by constitutional prescriptions; the other is mere machinery. The latter may be delegated to other than governmental agencies; not so the former. Matters of computation, appraisement, adjustment and such like, involving mere certainty of detail, follow the delegable power, * * *; but no element that enters essentially into the tax itself may be so delegated (citing *State* v. *Sickles,* 4 Zab. 125; *State* v. *Koster,* 9 Vroom 308; and *Munday* v. *Rahway,* 14 *Id.* 339) * * *: 'These decisions are precedents in our own courts, affirming the want of power in the legislative body in which the power of taxation is vested to delegate the authority to others to determine in its judgment or discretion the amount to be raised by taxation.' "

and again at page 583:

> "* * * this court is unequivocally committed to the doctrine that the legislature of this state, in which the governmental power of taxation resides, does not possess the power to delegate * * * the authority to determine, in its judgment or discretion, the amount to be raised by taxation, to which obviously must be added that such authority is in effect so delegated if such body may be empowered to levy taxes to the amount of an indebtedness to be incurred by it in its judgment or discretion."

In *Parks* v. *Board of Commissioners,* 61 Fed. 436, a case holding invalid an attempted delegation of the duty to levy special assessments, at page 437, appears the following language:

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> "Local assessments are an exercise of the taxing power. * * * The rule that legislative authority cannot

be delegated applies to local assessments, the same as to other taxes * * *.

* * * Can a tax be arbitrarily forced upon the taxpayers of a county, either by individuals or by officials in whose appointment they have no voice? The power of taxation is a power inherent in all governments. In a constitutional government, the people, by the constitution, confer it on the legislature. It is one of the highest attributes of sovereignty. It includes the power to destroy. It appropriates the property and labor of the people taxed. Unrestrained power of taxation necessarily leads to tyranny and despotism * * *.

* * * Of all the powers of government the one most liable to abuse is the power of taxation. If placed in hands irresponsible to the people of the district to be taxed, its abuse is a mere question of time. * * * There is no limit to the cost of these improvements, and the taxpayer is absolutely without means to check or control abuses that naturally follow arbitrary and irresponsible power over the property of others. The act is a plain violation of the principle of self-taxation, and a clear invasion of the right of property. The people, by the constitution, did not authorize the legislature to so jeopardize the right of property. The legislature is not the fountain—not the source—of power. Under our system of government the legislature can exercise only such powers as the people have delegated to that body, either expressly or by necessary implication, by the constitution. All rights not so delegated are retained by the people. The right to life, liberty, and property is among the inherent and inalienable rights that the people did not commit to the legislature. Constitutions are adopted and governments administered for the protection, and not for the destruction, of these reserved rights of the

people. *People* v. *Morris,* 13 Wend. 328; 1 Blackw. Tax Titles, §§15, 16. Illegal or oppressive taxation is destructive of the right of property, and is not government, under the constitution; but is misgovernment."

The best that can be said for Act No. 49 of 1921 is that the legislature desired to get money from the respondents and was not considering any constitutional limitations on the methods to be applied.

The court below held that the act was void because it delegated to administrative officers the legislative function of levying taxes (Record, p. 90).

CONCLUSION.

It is respectfully submitted that the judgment of the court below should be affirmed.

FRANCIS E. NEAGLE,
Attorney for Respondents.

New York, January, 1933.

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CHARLES ELMORE CROP
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 492.

THE PEOPLE OF PORTO RICO,
Petitioner,

against

RUSSELL & Co., Sucesores, S. en C., HORACE HAVEMEYER, FRANK A. DILLINGHAM, *et al.*

MEMORANDUM REQUESTED BY MR. JUSTICE BRANDEIS OF CASES ON REMOVAL FROM THE INSULAR COURTS OF PORTO RICO TO THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

This court in *Garrozi* v. *Dastas*, 204 U. S. 64, considered the right of removal from the Insular District Court to the District Court of the United States for Porto Rico. There the proposition advanced was that want of jurisdiction in the Federal Court might be asserted "by the person who procured the removal, who resisted the effort to remand, and when the want of jurisdiction is only suggested after trial and final decree" (p. 72).

Mr. Justice White said, at page 73:

> "We conclude, therefore, that where a case is removed from the local Porto Rican court to the United States court, over which case the latter court would have had jurisdiction as to all the parties impleaded if the case had been there originally brought, even though the removal was irregular, the party who caused the removal cannot be heard after judgment against him to assert that the United States court was wanting in jurisdiction solely on the ground that the case was erroneously removed."

The Circuit Court of Appeals for the First Circuit passed upon the question of removal in *People of Porto Rico* v. *Fortuna Estates,* 279 Fed. 500, 502, 505, which was referred to on the argument and in respondents' brief at page 21. The court at page 504 referred to *Garrozi* v. *Dastas, supra.* Certiorari was sought in this case upon the ground, among others, that that suit which had been removed was not removable because

> "(a) The People of Porto Rico is not a citizen of any sovereign power and has no domicile whatsoever, and (b) The defendant, Fortuna Estates, was then domiciled in Porto Rico" (Petition for certiorari, October Term, 1921, No. 969, pp. 3, 4).

This application for certiorari was denied by this court in 259 U. S. 587.

The right of removal by the same respondents who are respondents here was sustained by the Circuit Court of Appeals for the First Circuit in *Goico* v. *Russell & Co.,* 4 Fed. (2d) 7, the court relying upon its previous ruling in *People of Porto Rico* v. *Fortuna Estates, supra.* This case is cited in our brief at page 21.

The same Circuit Court of Appeals sustained the right of removal in a case brought by the People of Porto Rico in *People of Porto Rico* v. *Livingston*, 47 Fed. (2d) 712. The court there referred to its previous decision in *People of Porto Rico* v. *Fortuna Estates, supra.* The People of Porto Rico petitioned for certiorari in the Livingston case on this ground among others and the petition was denied in *People of Porto Rico* v. *Livingston*, 284 U. S. 642. The question was presented to the court in this language:

> "Does the grant of jurisdiction to the United States District Court for the District of Porto Rico under that provision of Section 41 of the Organic Act for Porto Rico, defining the jurisdiction of the Federal District Court as including 'controversies',
>
> 'where all of the parties on either side of the controversy are citizens or subjects of a foreign State or States, or citizens of a State, Territory, or District of the United States not domiciled in Porto Rico,'
>
> extend to an action or suit brought by the *quasi*-sovereign People of Porto Rico itself, in its own courts, for the recovery of lands situated within its territory, so as to authorize the defendant to remove such an action to the federal court?" (Petition for certiorari, No. 241, October Term, 1931, pp. 1, 2).

Respectfully submitted,

FRANCIS E. NEAGLE,
Attorney for Respondents.

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 492.—October Term, 1932.

The People of Puerto Rico, Petitioner, *vs.* Russell & Co., Suers., S. En C., Horace Havemeyer, Frank A. Dillingham, et al. } On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[March 13, 1933.]

Mr. Justice Stone delivered the opinion of the Court.

The People of ~~Porto~~ Puerto Rico, the petitioner, brought this suit in the Insular District Court of San Juan, ~~Porto~~ Puerto Rico, against the respondent, Russell & Co., a *sociedad en comandita* organized under ~~the Porto Rican commercial code~~ the laws of Puerto Rico, to recover certain assessments levied on lands of Russell & Co., under an act of the legislature of ~~Porto~~ Puerto Rico. The individual respondents, members of the *sociedad*, none of whom are citizens of ~~Porto~~ Puerto Rico or domiciled there, were not named as defendants. They appeared specially in the Insular Court and removed the cause to the United States District Court for ~~Porto~~ Puerto Rico. That court denied a motion to remand and gave its decree for respondents on the ground, first raised by the answer, that the assessments sued for were levied in violation of § 2 of the Organic Act of ~~Porto~~ Puerto Rico, March 2, 1917, c. 145, 39 Stat. 951, forbidding the enactment of any law impairing the obligation of contract. On appeal the Court of Appeals for the First Circuit affirmed, 60 F. (2d) 10; this Court granted certiorari. — U. S. —.

Section 41 of the Organic Act confers on the United States District Court for ~~Porto~~ Puerto Rico "jurisdiction of all cases cognizable in the district courts of the United States", and also "jurisdiction of all controversies where all of the parties on either side of the controversy are citizens of a foreign State or States, or citizens of a State, Territory or District of the United States not domiciled in ~~Porto~~ Puerto Rico, wherein the matter in dispute exceeds, exclusive of interest or cost the sum or value of $3,000". By § 42

"the laws of the United States relating to . . . removal of causes, and other matters or proceedings as between the courts of the United States and the courts of the several States, shall govern in such matters and proceedings as between the district court of the United States and the courts of Porto Rico . . .". Thus suits arising under the Constitution or laws of the United States are within the jurisdiction of the District Court for Porto Rico (§ 24, Judicial Code; 28 U. S. C., § 41), and civil suits begun in the Insular Court over which the federal court has original jurisdiction may be removed in accordance with the provisions of § 28 of the Judicial Code (28 U. S. C., § 71).

Admittedly, if the individual members of the *sociedad* are "parties" within the meaning of the Organic Act, § 41, *supra*, the suit is one within the jurisdiction of the District Court because of their non-residence, diversity of citizenship being unnecessary. See *Porto Rico Ry. Light & Power Co.* v. *Mor*, 253 U. S. 345. And if the non-residence of the individual members would confer jurisdiction upon the federal court in a suit against the *sociedad* originally instituted there we will assume, for present purposes, that it would also suffice to justify removal by the individuals, even though the Insular Court refuses to recognize them as parties. Compare *McLaughlin* v. *Hallowell*, 228 U. S. 278, 290. The petitioner argues, nevertheless, that the suit was not removable because of citizenship, for the reason that the *sociedad* is a juridical entity under Porto Rican law and, as in the case of a corporation, its domicil rather than that of its members determines citizenship for purposes of federal jurisdiction. If the petitioner's contention is sound, the District Court was without jurisdiction unless the suit was, as the respondents argue, one arising under the laws of the United States. The questions raised by these contentions must therefore first be answered.

For almost a century, in ascertaining whether there is the requisite diversity of citizenship to confer jurisdiction on the federal courts, we have looked to the domicil of a corporation, not that of its individual stockholders, as controlling. *Louisville R. R. Co.* v. *Letson*, 2 How. 497; *Rundle* v. *Delaware and Raritan Canal Co.*, 14 How. 80; *Marshall* v. *Baltimore & Ohio R. R.*, 16 How. 314; *Lafayette Insurance Co.* v. *French*, 18 How. 404; *Covington Drawbridge Co.* v. *Shepherd*, 20 How. 227; *St. Louis & San Francisco Ry. Co.* v. *James*, 161 U. S. 545; *Patch* v. *Wabash Ry.*, 207 U. S. 277. In its final form this rule of jurisdiction was stated in terms of a

"conclusive presumption" that the stockholders are citizens of the state of the corporate domicil, see *Marshall* v. *Baltimore & Ohio R. R., supra,* 328; *Covington Drawbridge Co.* v. *Shepherd, supra,* 233; *St. Louis & San Francisco Ry. Co.* v. *James, supra,* 554, but even those who formulated the rule found its theoretical justification only in the complete legal personality with which corporations are endowed. Fictitious that personality may be, in the sense that the fact that the corporation is composed of a plurality of individuals, themselves legal persons, is disregarded, but "it is a fiction created by law with intent that it should be acted on as if true". *Klein* v. *Board of Supervisors,* 282 U. S. 19, 24. This treatment of the aggregate for other purposes as a person distinct from its members, with capacity to perform all legal acts, made it possible and convenient to treat it so for purposes of federal jurisdiction as well. But status as a unit for purposes of suit alone, as in the case of a joint stock company, see *Chapman* v. *Barney,* 129 U. S. 677, 682; *Levering & Garrigues* v. *Morrin,* 61 F. (2d) 115, 117, or a limited partnership, not shown to have the other attributes of a corporation, *Great Southern Fireproof Hotel Co.* v. *Jones,* 177 U. S. 449; compare *Thomas* v. *Board of Trustees,* 195 U. S. 207, has been deemed a legal personality too incomplete; what was but an association of individuals for so many ends and a juridical entity for only a few, was not easily to be treated as if it were a single citizen.

The tradition of the common law is to treat as legal persons only incorporated groups and to assimilate all others to partnerships. *Chapman* v. *Barney, supra; Great Southern Fireproof Hotel Co.* v. *Jones, supra.* The tradition of the civil law, as expressed in the Code of Puerto Rico, is otherwise.[1] Therefore to call the *sociedad en comandita* a limited partnership in the common law

[1]Compare the decision of the United States and Chilean Claims Commission, established by virtue of the Convention of May 24, 1897, in Chauncey *v.* The Republic of Chile, No. 3, that a claim by a society *en comandita,* organized by citizens of the United States under Chilean law was not a claim by "corporations, companies or private individuals, citizens of the United States." And see Pic, Sociétés Commerciales (2d ed. 1925), v. 1, pp. 107, 118, 137, 194, 216; Lastig, Die Accomendatio (1907), viii, xi, xviii, 165; Goldschmidt, Universalgeschichte des Handelsrechts (1891), 257 ff.; Gierke, Die Genossenschaftstheorie (1887), 51; Young, Foreign Companies and other Corporations (1912), 114; compare Saleilles, *Etude sur l'histoire des Sociétés en Commandite,* Annales de Droit Commercial, v. 9 (1895), pp. 10, 49.

sense, as the respondents and others have done, is to invoke a false analogy. In the law of its creation the *sociedad* is consistently regarded as a juridical person. It may contract, own property and transact business, sue and be sued in its own name and right. Civil Code (1930), §§ 27 to 30; Code of Commerce (1930), §§ 95, 97, 123, 124. Its members are not thought to have a sufficient personal interest in a suit brought against the entity to entitle them to intervene as parties defendant. See *People* v. *Rivera Zayas*, 29 P. R. 423, 430. It is created by articles of association filed as public records. Code of Commerce, §§ 95, 98; compare Civil Code, §§ 1558, 1560. Where the articles so provide, the *sociedad* endures for a period prescribed by them regardless of the death or withdrawal of individual members. Civil Code, §§ 1591, 1596, 1598; Code of Commerce, § 141. Powers of management may be vested in managers designated by the articles from among the members whose participation is unlimited, and they alone may perform acts legally binding on the *sociedad*. Civil Code, §§ 1583, 1589; Code of Commerce, §§ 102, 106, 125. Its members are not primarily liable for its acts and debts (Code of Commerce, § 156), and its creditors are preferred with respect to its assets and property over the creditors of individual members, although the latter may reach the interests of the individual members in the common capital. Civil Code, § 1590; see *Quintana Bros. & Co.* v. *S. Ramírez & Co.*, 22 P. R. 707, 716. Although the members whose participation is unlimited are made contingently liable for the debts of the *sociedad* in the event that its assets are insufficient to satisfy them (Code of Commerce, §§ 125, 156; see *Sucrs. of M. Lamadrid & Co.* v. *Torrens, Mortorell & Co.*, 28 P. R. 824), this liability is of no more consequence for present purposes than that imposed on corporate stockholders by the statutes of some states. Compare *Louisville R. R. Co.* v. *Letson*, *supra*, 557, 558; *Liverpool Insurance Co.* v. *Massachusetts*, 10 Wall. 566, 575. These characteristics under the Codes of Porto Rico give content to their declaration that the *sociedad* is a juridical person. That personality is so complete in contemplation of the law of Porto Rico that we see no adequate reason for holding that the *sociedad* has a different status for purposes of federal jurisdiction than a corporation organized under that law. In neither case may nonresidents of Porto Rico, who have taken advantage of its laws to

organize a juridical entity for the purpose of carrying on business there, remove from the Insular Courts controversies arising under local law.

Respondents' contention that the suit is one arising under the laws of the United States, and therefore removable, irrespective of the citizenship of the defendant, rests upon two grounds: first, that the suit was brought pursuant to an Act of Congress of April 23, 1928, 45 Stat. 447, and, second, that the plaintiff in the District Court, The People of Porto Rico, derives its power as a sovereign political entity from the Organic Act, under which the Insular government was organized.

The Act of Congress first mentioned was adopted as a result of earlier litigation with respect to the present tax. Respondent and others originally brought suits in the Federal District Court of Porto Rico to enjoin collection of the tax, pending which, Congress, by Act of March 4, 1927, 44 Stat. 1421, forbade the maintenance of any suit in the United States District Court for Porto Rico to restrain the collection of any tax imposed by the laws of Porto Rico. Following that prohibition, this Court, in *Smallwood* v. *Gallardo*, 275 U. S. 56, held that all such injunction cases then pending in the federal courts, were abated by the statute and the suit brought by respondents was accordingly dismissed. *Gallardo* v. *Havemeyer*, 21 F. (2d) 1012. Subsequently, Congress passed the law of April 23, 1928, by which it was provided that in cases where the taxpayer had by such suits obtained an injunction restraining collection of the tax, the Treasurer of Porto Rico should "enforce the collection of the tax so enjoined . . . by a suit at law instead of by attachment, embargo, distraint or any other form of summary administrative proceeding . . .". Respondents argue that as the authority to recover the tax by suit rather than by attachment or other summary method was conferred by act of Congress, the suit is one arising under the laws of the United States.

We do not stop to examine the answering contention of petitioner that the Act of Congress was not an enabling act, but operated only to preclude resort by the Insular government to the summary remedies otherwise available for the collection of the tax. For we think that even though petitioner derived its authority to maintain the suit from the Act of Congress, it did not arise under the laws of the United States within the meaning of the jurisdictional statutes.

The suit was brought to recover assessments levied under the Act of the Porto Rican legislature, but not to enforce a right created by a law of the United States. No question of interpretation or enforcement of the federal statute appears upon the face of the complaint. Federal jurisdiction may be invoked to vindicate a right or privilege claimed under a federal statute. It may not be invoked where the right asserted is non-federal, merely because the plaintiff's right to sue is derived from federal law, or because the property involved was obtained under federal statute. The federal nature of the right to be established is decisive—not the source of the authority to establish it. *Shoshone Mining Co.* v. *Rutter,* 177 U. S. 505; *Blackburn* v. *Portland Gold Mining Co.,* 175 U. S. 571; *Gold-Washing & Water Co.* v. *Keyes,* 96 U. S. 199, 203; see *M'Goon* v. *Northern Pacific Ry. Co.,* 204 Fed. 998, 1001; compare *Swafford* v. *Templeton,* 185 U. S. 487. The case is analagous to those involving rights to land granted under laws or treaties of the United States. Where the complaint shows only that such was the source of the plaintiff's title, the case is not one within the jurisdiction of the federal courts. *Barnett* v. *Kunkel,* 264 U. S. 16, 20; *Shulthis* v. *McDougal,* 225 U. S. 561; *Devine* v. *Los Angeles,* 202 U. S. 313, 337; compare *Hopkins* v. *Walker,* 244 U. S. 486, 489; *Lancaster* v. *Kathleen Oil Co.,* 241 U. S. 551; *Wilson Cypress Co.* v. *Del Pozo,* 236 U. S. 635, 643; *Northern Pacific Ry. Co.* v. *Soderberg,* 188 U. S. 526.

For similar reasons the case stands in no different aspect because The People of Porto Rico is a political entity, recognized as such by the Act of Congress under which its government is organized. A state brought into the federal Union by act of Congress is likewise a political entity, and although not a citizen of the United States within the meaning of the statutes conferring jurisdiction on federal courts, *Stone* v. *South Carolina,* 117 U. S. 430; *Postal Telegraph Cable Co.* v. *Alabama,* 155 U. S. 482; see *Arkansas* v. *Kansas & Texas Coal Co.,* 183 U. S. 185, a suit brought by it presenting a federal question is within the jurisdiction of the district courts. *Railroad Co.* v. *Mississippi,* 102 U. S. 135, 140; *Ames* v. *Kansas,* 111 U. S. 449; *Southern Pacific R. R. Co.* v. *California,* 118 U. S. 109. But, a suit does not arise under the Constitution or laws of the United States merely because a state is the plaintiff, though the state derives its authority to maintain the suit from the Federal Constitution and laws. *Postal Telegraph Cable Co.* v.

Alabama, supra, 487; *Minnesota* v. *Northern Securities Co.,* 194 U. S. 48; *Germania Insurance Co.* v. *Wisconsin,* 119 U. S. 473, 475; *Arkansas* v. *Kansas & Texas Coal Co., supra*; see *Missouri, Kansas & Texas Railway Co.* v. *Commissioners,* 183 U. S. 53, 58; *Stone* v. *South Carolina, supra,* 433.

We do not overlook the point that a suit by a corporation organized under an act of Congress has been held to be within the jurisdiction of the federal courts as one arising under the laws of the United States. *Osborn* v. *Bank of United States,* 9 Wheat 738; *Pacific Railroad Removal Cases,* 115 U. S. 1. Whether or not these cases are distinguishable from others on the ground, usually urged in their support, that a corporation has no powers and can incur no obligations except as authorized by federal law, *Osborn* v. *The Bank, supra,* 823; see *Pacific Railroad Removal Cases, supra,* 13, their doctrine has not been extended to other classes of cases and has been restricted by successive statutes (Act of July 12, 1882, c. 290, § 4, 22 Stat. 162, 163, 28 U. S. C. A., § 41 (16); Act of January 28, 1915, c. 22, § 5, 38 Stat. 803, 804; Act of February 13, 1925, c. 229, § 12, 43 Stat. 936, 941, 28 U. S. C. A., § 42), the last of which limits it to cases of government owned corporations alone. We should fly in the face of this legislative policy and disregard precedents which we think controlling were we to extend the doctrine now.

The judgment below will be reversed and the cause remanded with instructions to remand it to the Insular Court from which it was removed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.